



Mental Health Act 2007 Consultation on Secondary Legislation

Chapter 1

Mental Health (Hospital, Guardianship and Treatment) Regulations 2008

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Policy	Estates
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Document Purpose	Consultation/Discussion
ROCR Ref:	Gateway Ref: 8844
Title	Mental Health Act 2007: Secondary Legislation Consultation
Author	DH
Publication Date	25 Oct 2007
Target Audience	PCT CEs, NHS Trust CEs, SHA CEs, Care Trust CEs, Foundation Trust CEs, Medical Directors, Directors of PH, Directors of Nursing, Local Authority CEs, Directors of Adult SSs, PCT PEC Chairs, NHS Trust Board Chairs, Special HA CEs, Directors of HR, Allied Health Professionals, GPs, Directors of Children's SSs
Circulation List	Voluntary Organisations/NDPBs
Description	This document invites comments on draft secondary legislation to be made under the Mental Health Act 2007. We will revise it wherever appropriate in the light of the comments and suggestions we receive and publish our response on the Department of Health website.
Cross Ref	Mental Health Act - Draft Code of Practice Consultation
Superseded Docs	N/A
Action Required	N/A
Timing	Consultation ends 24 January 2008
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Mental Health Act 2007 Consultation on Secondary Legislation

Chapter 1

Mental Health (Hospital, Guardianship and Treatment) Regulations 2008

1.1 Introduction

1.1.1 These draft regulations represent an updating of the existing Mental Health (Hospital, Guardianship and Consent to Treatment) Regulations 1983 which deal with a variety of mostly procedural matters to do with patients detained or subject to guardianship under the Mental Health Act 1983 (the 1983 Act). They should be read in conjunction with the consultation document on the statutory forms (see the link to chapter 2 from the covering web page).

1.1.2. The draft regulations incorporate a number of changes which follow as a consequence of the amendments made by the Mental Health Act 2007 (the 2007 Act) to the 1983 Act – for example references to “approved social workers” have been amended to “approved mental health professionals”. They also include procedural provisions in relation to supervised community treatment.

1.1.3. Further information on the various changes and additions is given below as follows:

- new provisions relating to supervised community treatment
- rules on the delegation of the functions of nearest relatives
- treatment safeguards
- other changes

1.1.4. The Secretary of State can only make regulations about things which the Act specifically says he may (or must) make regulations. Except where noted below, most of the regulations described in this chapter would be based on his powers to make regulations about how Part 2 of the 1983 Act should work in practice. Those powers are in section 32 of the 1983 Act.

1.1.5. Copies of the Mental Health (Hospital, Guardianship and Consent to Treatment) Regulations 1983 and the statutory instruments that have amended them over the years can be obtained from the Stationery Office. Their Customer Services can be contacted by email at esupport@tso.co.uk or telephone +44 (0)870 242 2345.

1.2. New provisions relating to supervised community treatment

Background

1.2.1 Increasingly, treatments for mental disorder can safely be given in the community. Reflecting this, the 2007 Act will introduce supervised community treatment for eligible patients following a period of detention for treatment in hospital. For suitable patients, supervised community treatment will provide a positive alternative to treatment in hospital and an opportunity to minimise the disruption to their lives. The insertion of powers into the 1983 Act to ensure that these patients continue with the medical treatment they need means that a proportion of patients with mental disorder can live safely in the community. This will help to reduce the risk of social exclusion that can result from detention under the 1983 Act. Supervised community treatment will address the specific problem where patients leave hospital, do not continue with their treatment, their health deteriorates and they require detention again – the so-called ‘revolving door’.

1.2.2 Increasingly, treatments for mental disorder can safely be given in the community. For suitable patients, supervised community treatment will provide a positive alternative to treatment in hospital and an opportunity to minimise the disruption to their lives. This will help to reduce the risk of social exclusion that can result from detention under the Act.

1.2.3 Not all patients who are detained under the Act will be suitable for supervised community treatment. It should benefit primarily those with a chronic mental disorder that has stabilised following treatment in hospital. People who would be a risk to their own health or safety or that of others if they did not continue to receive their treatment when discharged from hospital may be considered for supervised community treatment.

1.2.4 Anyone going onto supervised community treatment will have been assessed and treated in hospital first. They must either have been detained for treatment under section 3 of the 1983 Act or (in the case of offenders) detained without restrictions under a similar provision of Part 3. A patient's responsible clinician will decide if, and if so when, supervised community treatment is appropriate. The responsible clinician must obtain the agreement of a second opinion from an approved mental health professional before a patient can be placed on supervised community treatment. An appropriate package of treatment and support services will be put into place by the NHS and local authority social services before the patient leaves hospital on supervised community treatment.

1.2.5 Patients in the community will be asked to keep to conditions to help ensure that they stay in contact with mental health services and continue to receive the treatment they need, and to prevent a risk of harm to the patient or to others. Practitioners can monitor patients for signs of deteriorating health, and if necessary decide that they must be recalled to hospital. The responsible clinician must agree these conditions with the approved mental health professional.

1.2.6 Patients on supervised community treatment cannot be treated in the community against their wishes. If treatment against a patient's will is clinically necessary the patient will be recalled to hospital for treatment. The only exception will be in emergencies where patients lack the capacity to consent to treatment which is immediately necessary to prevent harm to the patient, and is a proportionate response to that harm.

1.2.7 There are clear criteria as to the circumstances in which people may be recalled to hospital for compulsory treatment. Failure to comply with a condition of supervised community treatment does not on its own justify recall to hospital but the responsible clinician may take that into account when considering if it is necessary to use the recall power. Following recall to hospital the responsible clinician may, after treatment, release the patient back into the community. But if the patient needs further treatment in hospital the responsible clinician will need to obtain the agreement of an approved mental health professional to detain the patient in hospital again. This is done by revoking the patient's community treatment order and must happen within 72 hours of recall to hospital.

1.2.8 Renewal of supervised community treatment occurs along the same timeframe as renewal of detention under section 3 – that is, after six months from the time a patient leaves hospital, at one year and then at yearly intervals. Renewal is via report to the hospital managers.

1.2.9 Patients on supervised community treatment will receive similar safeguards as patients detained in hospital including nearest relative rights and the right to apply to a Mental Health Review Tribunal. All patients on supervised community treatment will also have their treatment (if it involves giving medicines) reviewed and certified by a second opinion appointed doctor after three months from when medication was first given or one month from discharge from hospital, whichever is later. (There are also special rules applying if a patient on supervised community treatment is to receive ECT.) People on supervised community treatment will have their case regularly reviewed in the same way as detained patients, and will be discharged when they no longer meet the criteria.

1.2.10 The 2007 Act confers various powers on the Secretary of State which allow regulations to be made concerning patients on supervised community treatment. These are section 17F (power to make regulations about transfers of patients on supervised community treatment); section 19A (powers to make regulations about assigning responsibility for patients on supervised community treatment) section 32(1) and (2) (general powers to make regulations, including specifying statutory forms), section 64H(2) (power to make regulations about the certificate needed to treat patients on supervised community treatment in the community (the Part 4A certificate)).

1.2.11 Accordingly provision for patients on supervised community treatment is included in the draft regulations. Where necessary specific provision has been made to deal with the particular circumstances affecting patients on

supervised community treatment. As far as possible these provisions match those for detained patients - for example, the same process is required to transfer patients on supervised community treatment who have been recalled to hospital as for detained patients.

Provisions of the draft regulations affecting patients on supervised community treatment

1.2.12 Draft regulation 3 sets out rules on how documents are to be served under the Act. This includes community treatment orders and other documents relating to supervised community treatment. As for any other documents under the Act, delivery of any document relating to supervised community treatment is secured by delivery in person or by pre-paid post. This means, for example, in connection with the exercise of the recall power, that a notice of recall may be served by delivery to the patient's last known address. (This might be necessary if the patient needs to be recalled due to the risk arising if he is not treated in hospital, but the patient cannot be found at the last address. Once the notice of recall is duly served the patient can be treated as absent without leave if that is necessary.)

1.2.13 The same draft regulation also provides for a nearest relative's notice of an order for discharge from SCT, and for the order itself, to be served by delivery or by sending it to the managers of the patient's responsible hospital.

Statutory supervised community treatment forms

1.2.14 The regulations require various statutory forms to be used when people make, or record, particular decisions. Further detail is in the consultation document on the statutory forms (see the link to chapter 2 from the covering web page). This includes community treatment orders themselves and Part 4A certificates to be given by a second opinion appointed doctor to authorise certain types of medical treatment for patients on supervised community treatment. See draft regulations 6, 13, 14, 22 and 25 in particular.

Transfer of patients on supervised community treatment who have been recalled to hospital

1.2.15 Draft regulation 9 allows patients on supervised community treatment who have been recalled to one hospital to be transferred to another, provided that this is done within the 72-hour maximum period allowed for a patient to be detained following recall. This is unlikely to be needed often but might arise in certain circumstances. A patient might need hospital treatment urgently and is admitted to a different hospital from the responsible hospital, but for some reason needs to be assessed in the responsible hospital before decisions about discharge or revocation of the community treatment order can be made. Or patients might need specialist treatment in a different hospital to the one to which they have been recalled. (If a patient's community treatment order is revoked the normal rules about transfer of detained patients will of course apply.)

1.2.16 If the two hospitals involved in the transfer are under the same management there is no need for a special procedure. If they are not, the managers of the first hospital must satisfy themselves that arrangements have been made to admit the patient to the second hospital, and complete a form documenting that transfer. If the transferring hospital is an independent hospital where the patient is an NHS patient being treated under a contractual arrangement, the authority for transfer can be given by an officer of the relevant NHS body. Draft regulation 12 gives authority for the patient to be conveyed between hospitals. Nearest relatives must, if practicable, be informed of the transfer, unless the patient requests otherwise (see draft regulation 23).

Assignment of responsibility for patients on supervised community treatment

1.2.17 All patients on supervised community treatment have a hospital which is responsible for oversight of their case while they are in the community - their "responsible hospital" under the Act. Draft regulation 17 provides that responsibility for a patient may be re-assigned to another hospital. The need for this might arise if a patient wants to move home, or where the patient is staying in the same place but a local reorganisation makes it desirable for a different hospital to take on responsibility for the patient.

1.2.18 If the two hospitals involved are under the same management there is no need for a special procedure. If they are not, the managers of the first hospital must satisfy themselves that arrangements have been made for the second hospital to assume responsibility for the patient, and complete a form documenting that assignment. If the assigning hospital is an independent hospital which has responsibility for the patient under an NHS contract, an officer of the relevant contracting authority can authorise the re-assignment. Nearest relatives must, if practicable, be informed of the assignment, unless the patient requests otherwise (see regulation 23).

1.3 Changes to the rules on delegation by the nearest relative

1.3.1 The Mental Health Act provides for a number of functions and associated rights to be exercised by the nearest relative. These provide important safeguards for the patient and include –

- the right of a nearest to object to an application under section 3 (detention in hospital for treatment) or section 7 (guardianship).
- the right of the nearest relative to make applications under the Act wherever an approved mental health professional can under section 2,3,4 and 7.
- the responsibility of hospital managers to advise nearest relatives, where the patient does not object, of the patient's discharge from hospital, or of the information given to patients regarding their rights and the nature of their detention or community treatment order, the nearest relative's own rights and the fact of a patient's discharge.

1.3.2 Draft regulation 21 allows nearest relatives to authorise other people to exercise their functions on their behalf.

1.3.3 As now, the regulations do not allow them to delegate their functions to a person who would be excluded from being the patients nearest relative for the following reasons:

- they are under the age of 18
- they are not normally resident in the UK (where the patient is)

1.3.4 In addition, the draft regulations suggest that they may not appoint people who would have been nearest relative themselves had they not been displaced by the county court.

1.3.5 Nearest relatives can delegate their functions by notifying the person to whom they are delegating. The delegation takes effect when that person receives the notification, which has to be in writing. The nearest relative must also advise the patient and where relevant, the managers of the relevant hospital or the local social services authority (as appropriate) as soon as possible once the delegation has been made. Nearest relatives can revoke the delegation in the same way.

1.3.6 There are two functions which the Act does not allow nearest relatives to delegate. They cannot delegate the right to apply to the Mental Health Review Tribunal under section 69 of the Act for the discharge of patients who are subject to hospital orders or guardianship orders imposed by the courts. And when hospital managers are required to give information to the nearest relatives of patients subject to such orders (or to other provisions of Part 3 of the Act relating to offenders), the nearest relative cannot require the managers to inform someone else instead on their behalf.

1.3.7 Where the nearest relative ceases to be the patient's nearest relative, for any reason, their delegation of functions falls.

1.4 Treatment safeguards

1.4.1 The Act provides certain special safeguards for particular forms of medical treatment for mental disorder.

1.4.2 Sections 57, 58 and 58A provide for specific safeguards and requirements that must normally be met before the treatments provided for in those sections can be administered to detained patients. In the case of section 57 the safeguards apply to all patients whether or not they are detained. In the case of section 58A, as well as all detained patients, the safeguards apply to patients under the age of 18 who are neither detained nor on supervised community treatment.

1.4.3 Section 57 says that no patient may be given neurosurgery for mental disorder (“psychosurgery”) unless they consent to it. In addition a second opinion appointed doctor and two other people appointed by the Mental Health Act Commission must certify that the patient has consented and the second opinion appointed doctor must certify that the treatment is appropriate

1.4.4 Section 58 says that patients detained under the Act cannot be given medication (after an initial three month period) unless they consent to it (in which case that consent must be recorded on a certificate by the approved clinician in charge of the treatment or a second opinion appointed doctor) or they either cannot or will not consent, but a second opinion appointed doctor has approved the treatment as appropriate.

1.4.5 Section 58A (which is added by the 2007 Act) says that detained patients who have the capacity to consent to electro-convulsive therapy (ECT) may only be given it if they consent to it and the clinician in charge, or a second opinion appointed doctor, records their consent on a certificate. If they refuse to consent, they cannot be given the treatment. If detained patients cannot consent to ECT, they may only be given it if a second opinion appointed doctor certifies that it is appropriate. In addition, no patient aged under 18, whether or not detained, may be given ECT unless a second opinion appointed doctor certifies that it is appropriate.

1.4.6 Under Part 4A of the Act, patients on supervised community treatment cannot be given treatments covered by section 58 or 58A unless they are approved by a second opinion appointed doctor on what is known as a Part 4A certificate. This applies whether they consent to the treatment, or are unable to consent to it. (Patients on supervised community treatment who have the capacity to consent to treatment, but refuse it, cannot be treated unless they are recalled to hospital.) Draft regulations 24 and 25 set out which certificates are to be used for these purposes.

1.4.7 Also, sections 57, 58 and 58A say that regulations can extend them to cover other kinds of treatment for mental disorder as well.

1.4.8 As now, regulation 24 extends section 57 to cover the surgical implantation for the purpose of reducing male sexual drive. It also extends

the new section 58A to cover the medications used as part of ECT (for example, anaesthetics and muscle relaxants.) This is so that it is never necessary for two separate certificates to be issued in order to allow ECT to be given to a patient.

1.4.9 Sections 57, 58 and 58A and certain aspects of Part 4A of the Act do not apply where treatment is immediately necessary. This means, in particular, that treatment can be given without a certificate, if necessary. What is “immediately necessary” is defined in the Act (for example, in section 62).

1.4.10 For ECT it only covers cases where the treatment is immediately necessary to save the patient’s life or to prevent a serious deterioration in the patient’s condition, whereas for section 57 and 58 treatments, it can also include cases where it is immediately necessary to alleviate serious suffering or stop the patient acting dangerously (subject to certain conditions.)

1.4.11 Parts 4 and 4A of the Act say that regulations must say which of the four possible categories of “immediate necessity” apply to other treatments under section 58A (apart from ECT). Draft regulations 24 and 25 say that only the same two categories of immediate necessity will apply to medications used as part of ECT as apply to ECT itself.

1.5 Other changes to the regulations

1.5.1 Under the 1983 Act as amended by the 2007 Act, mental disorders will no longer be divided into four legal categories, so none of the references to classification and reclassification of patients’ mental disorders in the current regulations appear in the new draft regulations.

1.5.2 Otherwise, except where the relevant part of Act itself has been amended, the draft regulations remain largely the same as those in force at the moment. However, we have also taken the opportunity to include a number of suggested improvements, including updating the language and style of the regulations.

1.5.3 Draft regulations 4 and 5 deal with the forms that have to be used when making and receiving applications to have patients detained or made subject to guardianship under Part 2 of the Act. Only minor changes have been made to these rules. See the link to chapter 2 from the covering web page for proposed changes to the forms themselves.

1.5.4 Draft regulations 7, 8, 10, 11 and 12 are about the procedures for transferring patients between hospitals or guardians, or between detention and guardianship. Again, only minor changes have been made to these rules. See the link to chapter 2 from the covering web page for changes to the relevant forms (including the proposed abolition of the special forms to be used for medical recommendations for transfer from guardianship to hospital).

1.5.5 At present, one set of regulations covers England and Wales. In future, the Welsh Ministers will make their own regulations for Wales. Draft regulation 10 says that when people are to be transferred from England to Wales, it is the Welsh regulations that govern the procedures for the transfer (in case the English and Welsh procedures should differ.)

1.5.6 Draft regulations 13 and 14 say which forms are to be used (where required by the Act) to record that patients' should continue to be subject to detention or guardianship, or remain patients on supervised community treatment. Draft regulation 15 sets out which form is to be used to record the arrival of patients transferred from outside England or Wales. Draft regulation 16 does the same for patients on supervised community treatment. Again, see chapter 2 for details of the forms themselves.

1.5.7 Draft regulation 18 sets out a new requirement for responsible clinicians to use a particular form when discharging patients. See chapter 2 for further information.

1.5.8 Draft regulation 19 deals with the duties of private guardians. Those duties are the same as now.

1.5.9 Draft regulation 20 deals with the duties of local social services authorities to arrange visits to guardianship patients. The duties are the same as now, except that where they have to arrange for patients to be visited by doctors, they can now arrange for an approved clinician who is not a doctor to visit instead.

1.5.10 Draft regulation 22 says which forms responsible clinicians must use if they need to bar the discharge of a patient from detention or supervised community treatment by a nearest relative under section 25 of the Act. Again, see the link to chapter 2 from the covering web page for the forms themselves.

1.5.11 Draft regulation 23 sets out when hospital managers and local social services authorities must give information to patients' nearest relatives about matters such as transfers between hospitals and renewal of detention or guardianship, or extension of supervised community treatment. Some of these duties are mentioned in current statutory forms, others are new.

1.5.12 For consistency with hospital managers' duties under section 132 of the Act to inform nearest relatives when patients are detained, these duties do not apply if patients request that their nearest relatives should not be informed. Nor do they require people to give nearest relatives information if that is not practicable. As in the Act itself, "practicable" refers not only to whether it is physically possible to inform nearest relatives, but also to whether it could be done without breaching patients' rights under the Human Right Act in those cases where, for example, involving a nearest relative might have a significantly adverse effect on the patient.

1.5.13 The regulation also places a new statutory duty on local social services authorities to inform guardianship patients (and their nearest relatives) about their rights to apply to the Mental Health Review Tribunal.

1.5.14 Draft regulations 26 and 27 deal with procedures relating to inspecting and withholding patients' correspondence. In practice, this is relevant only to the three high security psychiatric hospitals, and is the same as in the current regulations.

1.6 Electronic communication of information and record-keeping

1.6.1 Draft regulation 23 specifically says that nearest relatives may use e-mail or other electronic means when delegating their functions to someone else or revoking that delegation.

1.6.2 But for the most part, the 1983 Act at the moment does not clearly allow electronic means to be used as the official way of sending or record information which has to be in writing (including information that has to be given or recorded on statutory forms.)

1.6.3 It is possible that this could be changed by using the Electronic Communications Act 2005.

1.6.4 We would therefore be interested in views on

- what, if any, official written notices, information and records required by the 1983 Act or the regulations people should be able to write and send electronically
- what, if any, official records required by the 1983 Act or regulations people should be able to keep in electronic form without having to have a paper copy as well
- what, if any, conditions or limitations this should be subject to.

1.6.5 The kind of notices, information and records you may wish to think about include:

- written information for patients and nearest relatives required by the 1983 Act or regulations
- authorisation by hospital managers for officers (and other people) to carry out functions on their behalf
- applications for detention or guardianship, and supporting medical recommendations
- records of patients' admission to hospital required by the regulations (when first detained, or when transferred from another hospital)

- notices recalling patients to hospital when they are on leave of absence or supervised community treatment
- orders by nearest relatives discharging patients, or giving hospital managers notice of their intention to do so.

Consultation questions

General

- Q1.1 Do you think that we have covered the right areas in the regulations (given what the Act allows)?
- Q1.2 Do you think we have missed anything that should be covered (given what the Act allows)?
- Q1.3 Is there anything you think we could leave out of the regulations?
- Q1.4 Do you think we have made the right changes compared to the current regulations?
- Q1.5 Are there other changes you think we should have made?

Supervised community treatment

- Q1.6 Do you agree with the draft regulations about supervised community treatment?

Nearest relatives

- Q1.7 Have we identified the correct people who should be notified that the functions of the nearest relative have been delegated to another person under draft regulation 21?
- Q1.8 Draft regulation 21 also says that the notification must be made in writing and that that notice can be transmitted electronically in order to provide for a speedy delegation where this is needed. Is this right?

Treatment safeguards

- Q1.9 Do you agree with draft regulation 24 that surgical implantation of hormones for reducing male sex drive should remain subject to section 57 of the Act?
- Q1.10 Do you agree with draft regulations 24 and 25 that the use of medications administered as part of ECT should be covered by section 58A of the Act? and that they should only be “immediately necessary” in the Act in the same cases that ECT itself is?

Other changes in the regulations

Q1.11 Do you agree with the new draft regulation 23 about information for patients and nearest relatives?

Electronic communication and record keeping

Q1.12 Do you have a view on what, if any,

- official written notices, information etc required by the Act or regulations people should be able to write and send electronically
- official records required by the Act or regulations people should be able to keep in electronic form without having to have a hard copy as well?
- conditions or limitations there should be on this?

2008 No.000

MENTAL HEALTH, ENGLAND

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

<i>Made</i>	- - - -	2008
<i>Laid before Parliament</i>		2008
<i>Coming into force</i>	- -	2008

The Secretary of State for Health, in exercise of the powers conferred by sections 9, 17F(2), 19(1) and (4), 19A(1), 32(1) and (2), 57(1)(b), 58A(1)(b), 64(2), 64H(2) and 134(8) of the Mental Health Act 1983⁽¹⁾, makes the following regulations:

In accordance with sections 57, 58 and 58A of that Act, he has consulted with such bodies as appear to him to be concerned.

PART 1

GENERAL

Citation and commencement

1. These regulations may be cited as the Mental Health (Hospital, Guardianship and Treatment) Regulations 2008 and shall come into force on [] 2008.

Interpretation

2.—(1) In these regulations—

“the Act” means the Mental Health Act 1983;

“the Commission” means the Mental Health Act Commission and its legal successors;

“community patient” has the same meaning as in section 17A(7) of the Act;

“community treatment order” has the same meaning as in section 17A(7) of the Act;

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

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

“responsible hospital”, in relation to a community patient, has the same meaning as in section 17A(7) of the Act;

⁽¹⁾ 1983 c.20 as amended by the Mental Health Act 2007 c.12.

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

- (2) Unless otherwise stated, any reference in these regulations to—
- (a) a numbered section is to the section of the Act bearing that number;
 - (b) 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) a numbered form is a reference to the form in Schedule 1 bearing that number.

Documents

3.—(1) Except in a case to which paragraph (2), (3) or (4) applies, any document required or authorised to be served upon any authority, body or person by or under Part 2 of the Act (compulsory admission to hospital, guardianship or community treatment orders) or these regulations may be served—

- (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 his usual or last known residence.

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

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

- (a) any order by the nearest relative of the patient under section 23 for the patient’s discharge, and
- (b) the notice of such order given under section 25(1), shall be served either by—
 - (i) delivery of the order or notice at that hospital to an officer of the managers authorised by them to receive it, or
 - (ii) by sending it by prepaid post to those managers at that hospital.

(4) Where a patient is a community patient—

- (a) any order by the nearest relative of the patient under section 23 for the patient’s discharge, and
- (b) the notice of such order given under section 25(1A), shall be served either 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.

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

- (a) required or authorised by or under Part 2 of the Act or these regulations, and
- (b) purporting to be signed by a person required or authorised by or under that Part 2 or these regulations to do so,

shall (unless the contrary is shown) be received in evidence and be deemed to be such a document without further proof.

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

PART 2

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

Procedure for and record of hospital admissions

- 4.**—(1) For the purposes of admission to hospital under Part 2 of the Act—
- (a) any application for admission for assessment under section 2 shall be in the form set out—
 - (i) where made by the nearest relative, in Form A1,
 - (ii) where made by an approved mental health professional, in Form A2;
 - (b) any medical recommendation for the purposes of section 2 shall be in the form set out—
 - (i) in the case of joint recommendations, in Form A3,
 - (ii) in any other case, in Form A4;
 - (c) any application for admission for treatment under section 3 shall be in the form set out—
 - (i) where made by the nearest relative, in Form A5,
 - (ii) where made by an approved mental health professional, in Form A6;
 - (d) any medical recommendation for the purposes of section 3 shall be in the form set out—
 - (i) in the case of joint recommendations, in Form A7,
 - (ii) in any other case, in Form A8;
 - (e) any emergency application under section 4 shall be in the form set out—
 - (i) where made by the nearest relative, in Form A9,
 - (ii) where made by an approved mental health professional, in Form A10;
 - (f) any medical recommendation for the purposes of section 4 shall be in the form set out in Form A11;
 - (g) any report made under subsection (2) of section 5 (detention of 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 person nominated by the registered medical practitioner or approved clinician to act for them,shall be in the form set out in Form H1;
 - (h) any record made under subsection (4) of section 5 (power to detain an in-patient for a maximum of 6 hours) by a nurse of the class for the time being prescribed for the purposes of that subsection shall be in the form set out in Form H2.
- (2)** For the purposes of section 15 (rectification of applications and recommendations), the managers of the hospital to which a patient has been admitted in pursuance of an application for assessment or for treatment may authorise an officer or class of officers 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)** An authority referred to in paragraph (2) shall be in writing.
- (4)** Where a patient has been admitted to a hospital pursuant to an application under section 2, 3 or 4, or detained pursuant to a report under section 5(2), a record of admission or detention shall be made by the managers of that hospital in the form set out in Form H3 and shall be attached to the application or, as the case may be, report.

Procedure for and acceptance of guardianship applications

- 5.—**(1) For the purposes of section 7 (application for guardianship)—
- (a) an application for guardianship shall be in the form set out—
 - (i) where made by the nearest relative, in Part 1 of Form G1,
 - (ii) where made by an approved mental health professional, in Part 1 of Form G2
 - (b) where a person other than a local social services authority is named as guardian, the statement by that person that he is willing to act shall be in the form set out in Part 2 of Form G1 or, as the case may be, G2;
 - (c) any medical recommendation shall be in the form set out—
 - (i) in the case of a joint recommendation, in Form G3,
 - (ii) in any other case, in Form G4.
- (2)** A local social services authority may authorise an officer or class of officers on behalf of the authority to consent under section 8(4) to any—
- (a) amendment of any guardianship application which the authority has accepted, or
 - (b) medical recommendation given for the purposes of that application.
- (3)** An authority referred to in paragraph (2) shall be in writing.
- (4)** Where such an application is accepted by the responsible local social services authority it shall record its acceptance of the application in the form set out in Form G5 (which shall be attached to the application).

Procedure for and records relating to Community Treatment Orders

- 6.—**(1) For the purposes of section 17A (community treatment orders)—
- (a) an order made by the responsible clinician shall be in the form set out in Parts 1 and 3 of Form CTO1;
 - (b) the agreement of the approved mental health professional shall be in the form set out in Part 2 of Form CTO1;
 - (c) as soon as reasonably practicable, the responsible clinician shall furnish the managers of the responsible hospital with that order.
- (2)** For the purposes of section 17B (conditions in community treatment orders)—
- (a) the conditions to which the patient is subject whilst the order remains in force shall be in the form set out in Form CTO1;
 - (b) a variation of any of those conditions by the responsible clinician shall be in the form set out in Form CTO2;
 - (c) as soon as reasonably practicable, the responsible clinician shall furnish the managers of the responsible hospital with Form CTO2;
 - (d) those managers shall attach Form CTO2 to Form CTO1.
- (3)** For the purposes of section 17E (power to recall a community patient to hospital)—
- (a) a responsible clinician's notice recalling a patient to hospital shall be in the form set out in Form CTO3;
 - (b) as soon as reasonably practicable, the responsible clinician shall furnish the managers of the hospital with a copy of the notice recalling the patient to hospital;
 - (c) where the patient is recalled to a hospital which is not the responsible hospital, the responsible clinician shall notify those managers in writing of the name and address of the responsible hospital; and
 - (d) the managers of the hospital to which the patient is recalled shall record the time and date of the patient's detention pursuant to that notice in the form set out in Form CTO4.
- (4)** For the purposes of section 17F (powers in respect of recalled patients)—

- (a) an order referred to in subsection (4) (responsible clinician's order revoking a community treatment order) shall be in the form set out in Parts 1 and 3 of Form CTO5;
- (b) a statement of an approved mental health professional referred to in that subsection (that he agrees with the responsible clinician and that it is appropriate to revoke the order) shall be in the form set out in Part 2 of Form CTO5;
- (c) as soon as reasonably practicable, the responsible clinician shall furnish the managers of the hospital to which the patient is recalled with that form;
- (d) where the patient is recalled to a hospital which is not the responsible hospital, the managers of that hospital shall (as soon as reasonably practicable) furnish the managers of the hospital which was the patient's responsible hospital prior to the revocation of the patient's community treatment order, with a copy of Form CTO5.

Transfer from hospital to hospital or guardianship

7.—(1) This regulation shall apply in respect of any patient to whom section 19(1)(a) of the Act applies (including a patient to whom that section applies as modified by Schedule 1 to the Act) (“a 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 is given by the managers of the hospital in which the patient is liable to be detained in the form set out in Part 1 of Form H4; and
 - (b) those managers are satisfied that arrangements have been made for the admission of the patient to the hospital to which the patient is being transferred within a period of 28 days beginning with the date of the authority for transfer.
- (3)** On the transfer of that patient, the managers of the hospital to which the patient is transferred shall record the patient's admission in the form set out in Part 2 of Form H4.
- (4)** A hospital patient may be transferred into the guardianship of a local social services authority, or of any person approved by a local social services authority, where—
- (a) an authority for transfer is given by the managers of the hospital in which the patient is detained in the form set out in Part 1 of Form G6;
 - (b) the transfer has been agreed by the local social services authority, which will be the responsible one if the proposed transfer takes effect, in the form set out in Part 2 of that Form;
 - (c) that local social services authority has specified the date on which the transfer shall take place in the form set out in Part 2 of that Form; and
 - (d) the agreement of the person named as guardian in the authority for transfer has been recorded in the form set out in Part 3 of that Form where that person is a person other than a local social services authority.
- (5)** A hospital patient who is detained in an independent hospital—
- (a) may be transferred from that hospital to another where both are under the management, and paragraph (2) shall not apply; and
 - (b) where that patient is maintained under a contract with a Strategic Health Authority, Local Health Board, Primary Care Trust, NHS Trust, NHS Foundation Trust, a special health authority or the Welsh Ministers, any authority for transfer required under paragraph (2)(a) or, as the case may be, may be (4)(a) may be given by an officer of that authority, board or trust authorised by that authority, board or trust in that behalf, or by those Ministers, instead of by the managers.
- (6)** The functions of the managers referred to in this regulation may be performed by an officer authorised by them in that behalf.

Transfer from guardianship to guardianship or hospital

8.—(1) This regulation shall apply in respect of any patient who is for the time being subject to guardianship under Part 2 of the Act (including a patient to whom that Part applies as modified by Schedule 1 to the Act) (“a guardianship patient”).

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

- (a) an authority for transfer is given by the guardian in the form set out in Part 1 of Form G7;
- (b) that transfer has been agreed by the local social services authority, which will be the responsible one if the proposed transfer takes effect, in the form set out in Part 2 of that Form;
- (c) that local social services authority has specified the date on which the transfer shall take place in the form set out in Part 2 of that Form; and
- (d) where the person named in the authority for transfer as proposed guardian is a person other than a local social services authority, the agreement of that person has been recorded in the form set out in Part 3 of that Form.

(2) An authority for transfer to hospital of a guardianship patient may be given by the responsible local social services authority in the form set out in Form G8 where—

- (a) an application for admission for treatment has been made by an approved mental health professional in the form set out in Form A6 and, for the purposes of that application, sections 11(4) (consultation with nearest relative) and 13 (duty of approved mental health professional) shall apply as if the proposed transfer were an application for admission for treatment;
- (b) that application is founded on medical recommendations given by two registered medical practitioners in accordance with section 12 in the form set out—
 - (i) in the case of joint recommendations, in Form A7;
 - (ii) in any other case, in Form A8;
- (c) the responsible local social services authority is satisfied that arrangements have been made for the admission of the patient to that hospital within the period of 14 days beginning with the date on which the patient was last examined by a medical practitioner for the purposes of regulation 8(3)(b).

(3) On the transfer of a guardianship patient referral to in paragraph (3), a record of admission shall be made by the managers of the hospital to which he is transferred in the form set out in Form 14 and shall be attached to the application referred to in paragraph (3).

(4) In this regulation the functions of the local social services authority or the managers may be performed by an officer authorised by them in that behalf.

Transfer of community patients recalled to hospital

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

(1) 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 following requirements are satisfied.

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

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

(3) The managers of the hospital from which the patient is being transferred shall furnish the managers of the hospital to which the patient is being transferred with a copy of Form CTO5 before, or at the time of, the patient’s transfer.

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

(5) Where—

- (a) a patient has been recalled to an independent hospital; and
- (b) that patient is maintained under a contract with a Strategic Health Authority, Local Health Board, Primary Care Trust, NHS Trust, Foundation Trust, a special health authority or the Welsh Ministers,

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

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

Transfers from England to Wales

10.—(1) Where a patient who is liable to be detained or is subject to guardianship under Part 2 of the Act (including a patient to whom that Part applies as modified by Schedule 1 to the Act) is transferred from a hospital or guardianship in England to a hospital or guardianship in Wales, that transfer shall be subject to such conditions as may be prescribed in regulations made by the Welsh Ministers.

- (2) Where paragraph (1) applies and any regulations made by the Welsh Ministers provide for authority to convey a patient in Wales, those regulations shall provide authority to convey the patient whilst in England.

Conveyance to hospital on transfer from hospital to hospital or guardianship

11.—(1) Where the conditions of regulation 7(2) or 8(3) are satisfied, the authority for transfer given in accordance with those regulations shall be sufficient authority for the following persons to take the patient and convey the patient to the hospital to which the patient is being transferred within the periods specified—

- (a) in a case to which regulation 7(2) applies—
 - (i) an officer of the managers of either hospital, or
 - (ii) any person authorised by the managers of the hospital to which the patient is being transferred,within the period of 28 days beginning with the date of the authority for transfer;
- (b) in a case to which regulation 8(3) applies—
 - (i) an officer of, or ,
 - (ii) any person authorised by, the responsible local social services authority,

within the period of 14 days beginning with the date on which the patient was last examined by a medical practitioner for the purposes of regulation 8(3)(b).

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

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

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

Conveyance from hospital to hospital following recall of community patients

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

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

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

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

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

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

(2) The receipt of any renewal of authority for detention under section 20(3) shall be recorded by the managers of the hospital in which the patient is liable to be detained in the form set out in Part 3 of that Form.

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

(4) The responsible social services authority shall record any renewal of authority for guardianship under section 20(8) in the form set out in Part 2 of Form G9.

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

- (a) a report for the purposes of subsection (4) of that section (responsible clinician's report extending the community treatment period) shall be in the form set out in Parts 1 and 3 of Form CTO7;
- (b) a statement for the purposes of subsection (8) of that section (approval mental health professional's statement that conditions exist making it appropriate to extend the order) shall be in the form set out in Part 2 of CTO7.

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

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

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

- (a) any report for the purposes of section 21B(2) (authority for detention or guardianship of patients who are taken into custody or return after more than 28 days) shall be in the form set out in Part 1 of Form H6; and
- (b) the receipt of that report shall be recorded by the managers of the hospital in which the patient is liable to be detained in the form set out in Part 2 of that Form.

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

- (a) any report for the purposes of section 21B(2) shall be in the form set out in Part 1 of Form G10;
- (b) the receipt of that report shall be recorded by the responsible local social services authority in the form set out in Part 2 of that Form.

(3) In relation to a community patient—

- (a) any report for the purposes of section 21B(2) shall be in the form set out in Part 1 of Form CTO8; and
- (b) the receipt of that report shall be recorded by the managers of the responsible hospital in the form set out in Part 2 of that Form.

Removal to England

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

- (a) Section 82, 84 or 85 respectively of the Act; or
- (b) regulations made under section 290 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (removal and return of patients within United Kingdom).

(2) Where a removed patient is liable to be detained in a hospital, the managers of the hospital shall record the date on which the patient is admitted to the hospital in the form set out in Form 33.

(3) Where a removed patient is received into guardianship—

- (a) the guardian shall record the date on which the patient arrives at the place at which the patient is to reside on his reception into guardianship under the Act in the form set out in Form M1;
- (b) the guardian shall, unless the patient requests otherwise, inform the patient’s nearest relative (if any) as soon as reasonably practicable that the patient has been received into guardianship under the Act; and
- (c) a private guardian shall notify the responsible local social services authority of the date mentioned in sub-paragraph (a) and of the particulars mentioned in regulation 17(b) and (e).

Removal to England of patients subject to compulsion in the community

16.—(1) This regulation shall apply to a patient who is removed from Scotland, the Channel Islands or the Isle of man to England under—

- (a) section 289(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (in the case of Scotland), or
- (b) section 85ZA of the Act, (in the case of the Channel Islands or the Isle of Man).

(2) Where such a patient is, by virtue of those provisions, treated as if a community treatment order had been made discharging him from hospital, the managers of the responsible hospital shall record the date on which the patient arrived at the place where the patient is to reside in the form set out in Form M1.

Assignment of responsibility for community patients

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

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

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

- (a) an authority for the assignment is given by the managers of the assigning responsible hospital in the form set out in Part 1 of form CT09; and
- (b) the managers of the hospital to which the patient is to be assigned record—
 - (i) their agreement to the assignment; and
 - (ii) the date on which it is to take place,

in the form set out in Part 2 of that Form.

(3) On the assignment of the patient, the managers of the hospital to which the patient is being assigned shall—

- (a) record the patient's assignment in the form set out in Part 3 of Form CT09; and
- (b) notify the patient in writing of the assignment either before it takes place or as soon as reasonably practicable thereafter.

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

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

Discharge of patients

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

- (a) a patient liable to be detained under of the Act; or
- (b) a community patient,

shall be in the form set out in Form M2.

PART 3

Functions of Guardians and Nearest Relatives

Duties of private guardians

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

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

Visits to patients subject to guardianship

20. The responsible local social services authority shall arrange for every patient received into guardianship under Part 2 of the Act to be visited at such intervals as the authority may decide, but—

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

Performance of functions of nearest relative

21.—(1) Subject to the conditions of paragraph (6), the nearest relative of a patient may authorise in writing any person other than—

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

to act on his behalf place 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);
- (b) section 66 (applications to tribunals); and
- (c) these Regulations.

(3) Any such authority shall take effect upon receipt of the authority by the person authorised.

(4) Subject to the conditions of paragraph (6), the nearest relative of a patient may revoke such authority in writing.

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

(6) The conditions mentioned in paragraphs (1) and (4) are that the nearest relative shall immediately notify—

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

of the authorisation or, as the case may be, its revocation.

(7) An authorisation or notification referred to in this regulation may be transmitted electronically or in electronic form.

Discharge by nearest relative

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

- (a) shall be in the form set out in Part 1 of Form M3, and
- (b) the receipt of that report by—
 - (i) the managers of the hospital in which the patient is liable to be detained, or
 - (ii) the managers of the responsible hospital in the case of a community patient, shall be in the form set out in Part 2 of that Form.

PART 4

Provision of Information

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

- (a) patient is to be or has been transferred from hospital to hospital pursuant to section 19 or section 123 of the Act, the managers of the hospital to which the patient is to be or has been transferred shall take reasonable steps to cause the person appearing to them to be the patient's nearest relative to be informed of that transfer before it takes place or as soon as reasonably practicable thereafter;
- (b) patient's detention is renewed pursuant to a report furnished under section 20 of the Act, the managers of the responsible hospital shall take reasonable steps to cause the person 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) patient's detention is renewed pursuant to a report furnished under section 21B(7) of the Act, the managers of the responsible hospital shall take reasonable steps to cause the person appearing to them to be the patient's nearest relative to be informed of that renewal as soon as practicable following their decision not to discharge the patient;
- (d) patient's detention is renewed retrospectively pursuant to a report furnished under section 21B(5) and (6) of the Act, the managers of the responsible hospital shall take reasonable steps to cause the patient and the person appearing to them to be the patient's nearest relative to be informed of that renewal as soon as practicable following their receipt of that report;
- (e) patient's period of community treatment is extended pursuant to a report furnished under section 20A of the Act, the managers of the responsible hospital shall take reasonable steps to cause the person appearing to them to be the patient's nearest relative to be informed of that extension as soon as practicable following their decision not to discharge the patient;
- (f) patient's period of community treatment is extended pursuant to a report furnished under section 21B(7A) of the Act, the managers of the responsible hospital shall take reasonable steps to cause the person appearing to them to be the patient's nearest relative to be informed of that extension as soon as practicable following their decision not to discharge the patient;
- (g) patient's period of community treatment is extended retrospectively pursuant to a report furnished under section 21B(6A) and (6B) of the Act, the managers of the responsible hospital shall take reasonable steps to cause the patient and the person appearing to them to be the patient's nearest relative of that extension as soon as practicable following their receipt of that report;
- (h) patient is to be or has been assigned to another hospital which assumes responsibility for that patient as a community patient, the managers of the hospital to which the patient is to be or has been assigned shall take reasonable steps to cause the person appearing to them to be the patient's nearest relative to be informed of that assignment before or as soon as practicable following it taking place;

- (i) patient is to be or has been transferred from hospital to guardianship pursuant to section 19 of the Act, the responsible social services authority shall take reasonable steps to cause the person appearing to it to be the patient's nearest relative to be informed of that transfer before it takes place or as soon as practicable thereafter;
 - (j) guardianship of a patient 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 of the Act, the responsible social services authority shall take reasonable steps to cause the person appearing to it to be the patient's nearest relative to be informed of that vesting, or as the case may be, transfer before it takes place or as soon as practicable thereafter;
 - (k) patient's guardianship is renewed pursuant to a report furnished under section 20 of the Act, the responsible social services authority shall take reasonable steps to cause the person 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 managers of the relevant hospital of that report;
 - (l) patient's guardianship is renewed pursuant to a report furnished under section 21B(7) of the Act, the responsible social services authority shall take reasonable steps to cause the person 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 managers of the relevant hospital of that report;
 - (m) patient's guardianship is renewed retrospectively pursuant to a report furnished under section 21B(5) or (6) of the Act, the responsible social services authority shall take reasonable steps to cause the patient and person 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 managers of the relevant hospital of that report.
- (2) Where paragraph (1)(l) and (m) applies, the local social services authority shall, as soon as practicable inform the guardian of its receipt of a report furnished under section 21B of the Act.
- (3) Upon a patient becoming subject to guardianship under the Act, the responsible local social services authority shall take such steps as are practicable to cause to be informed both the patient and the person appearing to the authority to be the patient's nearest relative of the rights referred to below.
- (4) Those rights are—
- (a) the patient's right to apply to a Mental Health Review Tribunal under section 66 of the Act;
 - (b) the nearest relative's right, as the case may be, to—
 - (i) discharge the patient under section 23 of the Act, or
 - (ii) apply to a Mental Health Review Tribunal under section 69 of the Act (where the patient is, or is treated as being, subject to guardianship under section 37 of the Act).
- (5) Where information referred to in paragraph (3)—
- (a) is to be given to the patient, it shall be given both orally and in writing;
 - (b) is to be given to the person appearing to be the patient's nearest relative it shall be given in writing.

PART 5

Consent to Treatment

Consent to treatment

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

- (a) the form of treatment to which that section shall apply, in addition to the treatment mentioned in subsection (1)(a) of that section (any surgical operation for destroying brain tissue or for destroying the functioning of brain tissue), shall be the surgical implantation of hormones for the purpose of reducing male sexual drive;
 - (b) the certificates required for the purposes of subsection (2)(a) and (b) of that section shall be in the form set out in T1.
- (2) For the purposes of section 58 (treatment requiring consent or a second opinion) the certificates required for the purposes of subsection (3)(a) and (b) of that section shall be in the form set out in Forms T2 and T3 respectively.
- (3) For the purposes of section 58A (electro-convulsive therapy, etc.) the form of treatment to which that section shall apply, in addition to the administration of electro-convulsive therapy mentioned in subsection (1)(a) of that section, is the administration of medicines as part of that therapy. The certificates required for the purposes of subsections (3), (4) and (5) of that section shall be in the form set out in Forms T4, T5 and T6 respectively.
- (4) Section 58A does not apply to treatment by way of the administration of 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 condition).

PART 6

Treatment of Community Patients not recalled to Hospital

25.—(1) For the purposes of Part 4A of the Act (treatment of community patients not recalled to hospital), the certificates required for the purposes of sections 64B(2)(b) and 64E(2)(b) shall be in the form set out in Form CTO10(N15).

(1) Treatment of a patient to whom section 64B(3)(b) or section 64E(3)(b) applies, may include treatment by way of medications administered as part of electro-convulsive therapy but only where that treatment falls within section 64C(5)(a) or (b).

(2) Treatment of a patient to whom section 64G applies may include treatment by way of medications administered as part of electro-convulsive therapy but only where that treatment falls within section 64G(5)(a) or (b).

PART 7

Correspondence of Patients

Inspection and opening of postal packets

26.—(1) Where under section 134(4) (inspection and opening of postal packets addressed to or by patients in hospital) any postal packet is inspected and opened, but neither the packet nor anything contained in it is withheld under section 134(1) or (2) the person appointed who so inspected and opened it, shall record in writing—

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

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

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

- (a) that person shall record in a register kept for the purpose—

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

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

- (3)** In a case to which section 134(1)(b) or (2) applies—
- (a) the notice required for the purposes of section 134(6) shall include—
 - (i) a statement of the grounds on which the packet in question or anything contained in it was withheld, and
 - (ii) the name of the person appointed who so decided to withhold that packet or anything contained in it and the name of the hospital; and
 - (b) where anything contained in a packet is withheld the record required by paragraph (2)(b) above shall, if the provisions of section 134(6) are otherwise satisfied, be sufficient notice to the person to whom the packet is addressed for the purposes of section 134(6).
- (4)** For the purposes of this regulation “the person appointed” means a person appointed under section 134(7) to perform the functions of the managers of the hospital under that section (“the person appointed”),

Review of decisions to withhold postal packets

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

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

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

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

PART 8

Revocations

Revocations

28. The regulations and orders specified in column 1 of Schedule 2 are hereby revoked to the extent mentioned in column 3 of that Schedule.

Signed by authority of the Secretary of State for Health

Date

Name
Minister of State for Health
Department of Health

SCHEDULE 1

Regulations 4-9,13-17, 24, 25

FORMS FOR USE IN CONNECTION WITH COMPULSORY ADMISSION TO HOSPITAL, GUARDIANSHIP AND TREATMENT

The forms are in a separate pdf file which can be accessed from the main web page.

SCHEDULE 2

Regulation 28

REVOCATIONS

Regulation or Order 1	Reference 2	Extent of Revocation 3
Mental Health (Hospital Guardianship and Consent to Treatment) Regulations 1983	1983/893	The whole of the Regulations
Mental Health (Hospital, Guardianship and Consent to Treatment) Amendment Regulations	1993/2156	The whole of the Regulations
Mental Health (Hospital, Guardianship and Consent to Treatment) Amendment Regulations	1996/540	The whole of the Regulations
Mental Health (Hospital, Guardianship and Consent to Treatment) Amendment Regulations	1997/801	The whole of the Regulations
Mental Health (Hospital, Guardianship and Consent to Treatment) Amendment Regulations	1998/2624	The whole of the Regulations