

EXPLANATORY MEMORANDUM TO
THE MENTAL HEALTH (HOSPITAL, GUARDIANSHIP AND
TREATMENT) (ENGLAND) REGULATIONS 2008

2008 No. 1184

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations primarily deal with procedural matters relating to the operation of aspects of the Mental Health Act 1983 (“the 1983 Act”) which allow the detention in hospital of people with mental disorders, or the imposition of other compulsory measures on them, in their own interests or for the protection of other people. Amongst other things, the Regulations set out a range of statutory forms which must be used to make certain applications, recommendations and records under the Act.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 Regulation 20 provides for 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.) to be performed by any person authorised by those managers in that behalf. The Committee’s attention is drawn to section 45(4) of the Domestic Violence, Crime and Victims Act 2004 which provides that 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 1983 Act for the purposes of section 32(3) of the 1993 Act (regulations as to delegation of managers’ functions, etc). Section 32(3) of the 1983 Act, in turn, allows for the delegation of the functions of hospital managers under the 1983 Act.

3.2 The Committee’s attention is also drawn to the provisions of regulation 4(2), 6(4) and 10(3) which provide that, in certain cases involving the movement of patients between England and Wales, the requirements of Regulations to similar effect made by Welsh Ministers are to be followed. The Welsh Ministers have yet to lay those Regulations in the National Assembly for Wales, but it is intended that they will include reciprocal provisions. Although Regulations 9 and 17 deal with similar subject matter to regulations 6 and 10, they do not refer to Welsh Regulations, because sections 17F(2) and 19A(1) (respectively) of the 1983 Act themselves set out which set of Regulations is to apply.

4. Legislative Background

4.1 These Regulations are part of the implementation of the Mental Health Act 2007 (“the 2007 Act”), which amends the 1983 Act.

4.2 These Regulations replace, for England, the Mental Health (Hospital, Guardianship and Consent to Treatment) Regulations 1983 (No. 893). They are, in effect, a consolidated and up-dated version of those Regulations, revised in the light

of amendments to the 1983 Act made by the 2007 Act and a review of the Regulations as a whole.

5. Territorial Extent and Application

5.1 This Instrument applies to England.

6. European Convention on Human Rights

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

7. Policy Background

Policy

7.1 The 1983 Act provides, amongst other things, for certain compulsory measures to be taken in respect of people with mental disorders where those measures are justified by the risk posed by their mental disorder. The compulsory measures include detention in hospital for assessment or treatment, being placed under the guardianship of a local social services authority (or an individual approved by such an authority).

7.2 As a result of the amendments made by the 2007 Act, the compulsory measures available will in future also include being discharged from hospital onto supervised community treatment (SCT). Patients on supervised community treatment remain liable to be recalled to hospital if necessary.

7.3 At 31 March 2007 there were 15,300 patients detained in hospital under the 1983 Act in England, of whom 12,200 were detained in NHS facilities and 3,100 in independent hospitals. At the same date 926 people were subject to guardianship (with more than 99% of being subject to the guardianship of a local social services authority rather than a private individual).

7.4 The 1983 Act itself establishes the legal framework within which decisions about detention, guardianship and SCT are to be made. But more detailed procedural matters are left to regulations. Although the Regulations deal largely with matters of procedural detail, they are important in ensuring proper process are followed and that decisions which often have implications for people's liberty are properly taken and recorded.

7.5 Amongst other things, the Regulations set out:

- how and when the hospital managers and local social services authorities may delegate their functions under the relevant parts of the Act to officers and other people;
- the statutory forms to be used to make particular applications, recommendations and records under the Act, including applications to have people detained in hospital or received into guardianship, and the making, variation and revocation of community treatment orders (which are the mechanism by which people are discharged from hospital onto SCT);
- the procedure to be followed to transfer patients between one hospital and another, or between the guardianship of one person and another

- the way in which patients' nearest relatives may delegate to other the various rights they have under the Act in connection with patients
- duties, in addition to those in the Act itself, on hospital managers and local social services authorities to give information to patients and their nearest relatives.

7.6 In addition, the Regulations also deal with aspects of the special rules and procedures in Parts 4 and 4A of the 1983 Act about particular forms of treatment for mental disorder (including electro-convulsive therapy). In particular, the Regulations set out forms of treatment, in addition to those in the Act itself, which are to be subject to those special rules.

Guidance

7.7 The revised Code of Practice to the Mental Health Act 1983, which was laid before Parliament at the same time as these Regulations, contains extensive guidance on the operation of the Act. The Department of Health also proposes to publish a Reference Guide to the Act (and the related secondary legislation) which will explain the requirements of the legislation. The Department also proposes to make available, through its web-site, a summary of the main differences between these Regulations and their current equivalent. The new statutory forms will be available in due course for organisations to purchase through established national arrangements for the distribution of these and other forms.

Consultation

7.8 The Department of Health consulted publicly on a draft version of these Regulations, as part of a wider consultation on various pieces of draft secondary legislation arising from the 2007 Act. The consultation ran from 25 October 2007 to 24 January 2008, and was supported by a number of consultation events. Only a small number of written responses were received on these Regulations. Although they contained a variety of specific suggestions and comments (particularly on the draft statutory forms and the proposal to allow certain documents to be transmitted electronically), there was no evidence of any significant concerns about the Regulations in general.

8. Impact

8.1 No assessment has been prepared for these Regulations as they are not thought to have a significant impact on the private or voluntary sector.

9. Contact

9.1 Richard Rook at the Department of Health (tel. 020 7972 4648 or e-mail: Richard.Rook@dh.gsi.gov.uk) can answer any queries about the instrument.