STATUTORY INSTRUMENTS

2020 No. 1072

MENTAL HEALTH, ENGLAND

The Mental Health (Hospital, Guardianship and Treatment) (England) (Amendment) Regulations 2020

Made - - - -	*30th September 2020*
Laid before Parliament	*1st October 2020*
Coming into force - -	*1st December 2020*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 32, 64(2) and 64H(2) of the Mental Health Act 1983(**a**).

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Mental Health (Hospital, Guardianship and Treatment) (England) (Amendment) Regulations 2020 and come into force on 1st December 2020.

(2) These Regulations apply in relation to England only.

(3) In these Regulations—

(a) "the 2008 Regulations" means the Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008(**b**);

(b) "Schedule 1" means Schedule 1 to the 2008 Regulations.

Amendment of regulation 3

2.—(1) Regulation 3 (documents) of the 2008 Regulations is amended as follows.

(2) In paragraph (1)—

(a) omit "delivering it to";

(b) at the beginning of sub-paragraph (a) insert "delivering it to";

(c) for sub-paragraph (b), substitute—

"(b) sending it by means of electronic communication to the authority, body or person upon whom it is to be served, if that authority, body or person agrees;";

(d) in sub-paragraph (c), at the beginning omit "by";

(**a**) 1983 c. 20; section 32 was amended by the National Health Service and Community Care Act 1990 (c. 19), section 66(1) and Schedule 9, paragraph 24(5), the Mental Health (Patients in the Community) Act 1995 (c. 52), section 1(2) and Schedule 1, paragraph 2(a) and (b), the Health Authorities Act 1995 (c. 17), section 2(1) and schedule 1, paragraph 107(4), the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), section 34 and Schedule 4, paragraph 55, the Mental Health Act 2007 (c. 12), section 32(4) and Schedule 3, paragraph 15, section 45(2), section 55, Schedule 11 and Part 5, the Health and Social Care Act 2012 (c. 7), section 55(2) and Schedule 5, paragraph 27 and S.I 2007/961, article 3, Schedule 1, paragraphs 13(7)(a) and (b); section 64H(2) was amended by the Health and Social Care Act 2012 (c. 7), section 299(5)(a).

(**b**) S.I. 2008/1184, amended by S.I. 2008/2560 and 2012/1118. There are other amending instruments but none is relevant.

(e) in sub-paragraph (d), at the beginning omit "by".

(3) After paragraph (1) insert—

"(1A) In paragraphs (1)(a) and (b) references to the authority, body or person upon whom a document is to be served include any person authorised by that authority, body or person to receive it.

(1B) Paragraph (1)(b) does not apply where the person to whom the document is to be served is—

(a) a patient liable to be detained in hospital under Part 2 of the Act,

(b) a community patient, or

(c) a guardianship patient.".

(4) For paragraph (2) substitute—

"(2) Any application for the admission of a patient to hospital under Part 2 of the Act shall be served by—

(a) delivering the application to an officer of the managers of the hospital to which it is proposed that the patient shall be admitted who is authorised by them to receive it, or

(b) sending the application by means of electronic communication to the managers of the hospital to which it is proposed that the patient shall be admitted, whether or not those managers agree.".

(5) In paragraph (3)—

(a) at the end of sub-paragraph (b)(i), omit "or";

(b) at the end of sub-paragraph (b)(ii), omit "or";

(c) at the end of sub-paragraph (b)(iii), insert—

", or

(iv) sending it by means of electronic communication to the managers at that hospital, if those managers agree.".

(6) In paragraph (4)—

(a) at the end of sub-paragraph (b)(ii), omit "or";

(b) at the end of sub-paragraph (b)(iii), insert—

", or

(iv) sending it by means of electronic communication to the managers at that hospital, if those managers agree.".

(7) In paragraph (5)—

(a) at the end of sub-paragraph (a), omit "or";

(b) at the end of sub-paragraph (b), insert—

", or

(c) sending it by means of electronic communication to the managers of the hospital, if those managers agree.".

(8) After paragraph (7) insert—

"(7A)(a) Subject to sub-paragraph (b), where a document under this regulation is served by means of electronic communication, service is considered to have taken place immediately after it is sent to the recipient.

(b) Where an order or notice referred to in paragraphs (3) or (4) is sent by means of electronic communication, service is considered to have taken place at the beginning of the next business day after the day on which the order or notice was sent.".

(9) For paragraph (8) substitute—

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

(i) required or authorised by or under Part 2 of the Act or these Regulations, and

(ii) purporting to be signed by a person required or authorised by or under that Part or these Regulations to do so,

shall be received in evidence and be deemed to be such a document without further proof.

(b) For the purposes of sub-paragraph (a)—

(i) "signed" includes using an electronic signature;

(ii) "electronic signature" has the same meaning as in section 7(2) of the Electronic Communications Act 2000(**a**).".

(10) After paragraph (9) insert—

"(9A) Where under these Regulations a document may be served on hospital managers by means of electronic communication, that document may also be served on an officer of the managers of the hospital authorised by those managers to receive it.".

Amendment of regulation 22

3. In regulation 22(2) (duties of private guardians) of the 2008 Regulations omit "or by electronic communication".

Amendment of regulation 24

4.—(1) Regulation 24 (performance of functions of nearest relative) of the 2008 Regulations is amended as follows.

(2) In paragraph (2), at the beginning omit "Subject to paragraph (8),".

(3) Omit paragraph (8).

Amendment of regulation 25

5. In regulation 25 (discharge by nearest relative) of the 2008 Regulations, for paragraph (2) substitute—

"(2) In addition to the methods of serving documents provided for by regulation 3(1), reports under this regulation may be furnished by transmission by facsimile, if the managers of the hospital agree.".

Amendment of regulation 26

6. In regulation 26 (provision of information) of the 2008 Regulations, omit paragraph (8).

Amendment of Schedule 1

7.—(1) Schedule 1 (forms for use in connection with compulsory admission to hospital, guardianship and treatment) is amended as follows.

(2) In Form A1, for "[PRINT your full name and address]" substitute "[PRINT your full name, address and, if sending by means of electronic communication, email address]".

(3) In Form A2, for "[PRINT your full name and address]" substitute "[PRINT your full name, address and, if sending by means of electronic communication, email address]".

(4) In Form A3—

(**a**) 2000 c. 7; section 7(2) was amended by S.I. 2016/696, Schedule 3, paragraph 1(2).

(a) for "[PRINT full name and address of first practitioner]" substitute "[PRINT full name, address and, if sending by means of electronic communication, email address of first practitioner]";

(b) for "[PRINT full name and address of second practitioner]" substitute "[PRINT full name, address and, if sending by means of electronic communication, email address of second practitioner]".

(5) In Form A4, for "[PRINT full name and address of medical practitioner]" substitute "[PRINT full name, address and, if sending by means of electronic communication, email address of medical practitioner]".

(6) In Form A5, for "[PRINT your full name and address]" substitute "[PRINT your full name, address and, if sending by means of electronic communication, email address]".

(7) In Form A6, for "[PRINT your full name and address]" substitute "[PRINT your full name, address and, if sending by means of electronic communication, email address]".

(8) In Form A7—

(a) for "[PRINT full name and address of first practitioner]" substitute "[PRINT full name, address and, if sending by means of electronic communication, email address of first practitioner]";

(b) for "[PRINT name and address of second practitioner]" substitute "[PRINT full name, address and, if sending by means of electronic communication, email address of second practitioner]".

(9) In Form A8, for "[PRINT full name and address of practitioner]" substitute "[PRINT full name, address and, if sending by means of electronic communication, email address of practitioner]".

(10) In Form A9, for "[PRINT your full name and address]" substitute "[PRINT your full name, address and, if sending by means of electronic communication, email address]".

(11) In Form A10, for "[PRINT your full name and address]" substitute "[PRINT your full name, address and, if sending by means of electronic communication, email address]".

(12) In Form A11, for "[PRINT name and address of medical practitioner]", substitute "[PRINT name, address and, if sending by means of electronic communication, email address of medical practitioner]".

(13) In Form H1—

(a) in Part 1, after "consigning it to the hospital managers' internal mail system today at [time]", insert—

> "today sending it to the hospital managers, or a person authorised by them to receive it, by means of electronic communication";

(b) in Part 2, after "furnished to the hospital managers through their internal mail system", insert—

> "furnished to the hospital managers, or a person authorised by them to receive it, by means of electronic communication".

(14) In Form H5—

(a) in Part 3, after "today consigning it to the hospital managers' internal mail system.", insert—

> "today sending it to the hospital managers, or a person authorised by them to receive it, by means of electronic communication.";

(b) in Part 4, after "furnished to the hospital managers through their internal mail system.", insert—

> "furnished to the hospital managers, or a person authorised by them to receive it, by means of electronic communication.".

(15) In Form H6—

(a) in Part 1, after "today consigning it to the hospital managers' internal mail system.", insert—

"today sending it to the hospital managers, or a person authorised by them to receive it, by means of electronic communication.";

(b) in Part 2, after "furnished to the hospital managers through their internal mail system", insert—

"furnished to the hospital managers, or a person authorised by them to receive it, by means of electronic communication".

(16) In Form G1, for "[PRINT your full name and address]" substitute "[PRINT your full name, address and, if sending by means of electronic communication, email address]".

(17) In Form G2, for "[PRINT your full name and address]" substitute "[PRINT your full name, address and, if sending by means of electronic communication, email address]".

(18) In Form G3—

(a) for "[PRINT full name and address of first practitioner]" substitute "[PRINT full name, address and, if sending by means of electronic communication, email address of first practitioner]";

(b) for "[PRINT full name and address of second practitioner]" substitute "[PRINT full name, address and, if sending by means of electronic communication, email address of second practitioner]".

(19) In Form G4, for "[PRINT full name and address of practitioner]" substitute "[PRINT full name, address and, if sending by means of electronic communication, email address of practitioner]".

(20) In Form M2—

(a) in Part 1—

(i) after "consigning it to the hospital managers' internal mail system today at [time].", insert—

"today sending it to the hospital managers, or a person authorised by them to receive it, by means of electronic communication.";

(ii) after "PRINT NAME……" insert—

"Email address (if applicable)……..";

(b) in Part 2, after "furnished to the hospital managers through their internal mail system.", insert—

"furnished to the hospital managers, or a person authorised by them to receive it, by means of electronic communication."

(21) In Form T1, for "[PRINT full name and address]" substitute "[PRINT full name, address and, if sending by means of electronic communication, email address]".

(22) In Form T2, for "[PRINT full name and address]" substitute "[PRINT full name, address and, if sending by means of electronic communication, email address]".

(23) In Form T3, for "[PRINT full name and address]" substitute "[PRINT full name, address and, if sending by means of electronic communication, email address]".

(24) In Form T4, for "[PRINT full name and address]" substitute "[PRINT full name, address and, if sending by means of electronic communication, email address]".

(25) In Form T5, for "[PRINT full name and address]" substitute "[PRINT full name, address and, if sending by means of electronic communication, email address]".

(26) In Form T6, for "[PRINT full name and address]" substitute "[PRINT full name, address and, if sending by means of electronic communication, email address]".

(27) In Form CTO1, for "[PRINT full name and address of the responsible clinician]" substitute "[PRINT full name, address and, if sending by means of electronic communication, email address of the responsible clinician]".

(28) In Form CTO2, for "[PRINT full name and address of the responsible clinician]" substitute "[PRINT full name, address and, if sending by means of electronic communication, email address of the responsible clinician]".

(29) In Form CTO5—

(a) in Part 1, for "[PRINT full name and address of the responsible clinician]" substitute "[PRINT full name, address and, if sending by means of electronic communication, email address of the responsible clinician]";

(b) in Part 2, for "[PRINT full name and address]" substitute "[PRINT full name, address and, if sending by means of electronic communication, email address]".

(30) In Form CTO7—

(a) in Part 1, for "[PRINT full name and address of the responsible clinician]" substitute "[PRINT full name, address and, if sending by means of electronic communication, email address of the responsible clinician]";

(b) in Part 2, for "[PRINT full name and address]" substitute "[PRINT full name, address and, if sending by means of electronic communication, email address]";

(c) in Part 3, after "today consigning it to the hospital managers' internal mail system.", insert—

"today sending it to the hospital managers, or a person authorised by them to receive it, by means of electronic communication.";

(d) in Part 4, after "furnished to the hospital managers through their internal mail system.", insert—

"furnished to the hospital managers, or a person authorised by them to receive it, by means of electronic communication.".

(31) In Form CTO8—

(a) in Part 1—

(i) for "[PRINT full name and address of the responsible clinician]" substitute "[PRINT full name, address and, if sending by means of electronic communication, email address of the responsible clinician]";

(ii) after "today consigning it to the hospital managers' internal mail system.", insert—

"today sending it to the hospital managers, or a person authorised by them to receive it, by means of electronic communication.";

(b) in Part 2, after "furnished to the hospital managers through their internal mail system.", insert—

"furnished to the hospital managers, or a person authorised by them to receive it, by means of electronic communication.".

(32) In Form CTO9—

(a) in Part 1, for "[PRINT full name and address of the responsible clinician]" substitute "[PRINT full name, address and, if sending by means of electronic communication, email address of the responsible clinician]";

(b) in Part 2, for "[PRINT full name and address]" substitute "[PRINT full name, address and, if sending by means of electronic communication, email address]".

(33) In Form CTO11, for "[PRINT full name and address]" substitute "[PRINT full name, address and, if sending by means of electronic communication, email address]".

(34) In Form CTO12, for "[PRINT full name and address]" substitute "[PRINT full name, address and, if sending by means of electronic communication, email address]".

Transitional and saving provisions

8.—(1) Nothing in these Regulations affects the validity of any form set out in Schedule 1 which is served on an authority, body or person before the date on which these Regulations come into force.

(2) Paragraph (3) applies to any document required by the 2008 Regulations to be served in a form set out in Schedule 1 and which is served on any authority, body or person between the date on which these Regulations come into force and 1st February 2021.

(3) Where a document to which this paragraph applies is served other than by means of electronic communication, a requirement to serve that document in a form set out in Schedule 1 is met if—

(a) the document is served in a form set out in that Schedule as amended by these Regulations, or

(b) the document is served in a form set out in that Schedule as it applied immediately before the date on which these Regulations come into force.

Nadine Dorries
Minister of State,
Department of Health and Social Care

30th September 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008 (S.I. 2008/1184) (the "2008 Regulations"), which deal with procedural matters relating to the compulsory treatment of people with mental disorders under the Mental Health Act 1983 (c. 20) ("the Act").

Regulation 1 contains commencement, citation, application and interpretation provisions.

Regulation 2 amends regulation 3 of the 2008 Regulations, which sets out the manner in which documents may be served under the 2008 Regulations and Part 2 of the Act.

— Regulation 2(2) amends regulation 3(1) of the 2008 Regulations by adding electronic communication to the permitted methods of service.

— The key amendment made by regulation 2(3) is to insert paragraph (1B) into the 2008 Regulations, which creates an exception to the general rule that documents may be served electronically. Paragraph (1B) provides that documents may not be served by means of electronic communication alone on patients liable to be detained in hospital, or patients subject to guardianship or community treatment orders.

— Regulation 2(4) amends regulation 3(2) of the 2008 Regulations to allow for detention applications to be sent to hospital managers electronically, whether or not the managers agree.

— Regulation 2(5) amends regulation 3(3) of the 2008 Regulations to allow for discharge orders and notices made by nearest relatives to be sent to hospital managers electronically, so long as the managers agree.

— Regulation 2(6) amends regulation 3(4) of the 2008 Regulations to allow for discharge orders and notices, made by the nearest relatives of community patients, to be sent electronically to the managers of the responsible hospital, so long as the managers agree.

— Regulation 2(7) amends regulation 3(5) of the 2008 Regulations. It allows for reports made by clinicians under section 5(2) of the Act, to detain people who are already inpatients in hospital, to be sent electronically to the hospital managers, so long as the managers agree.

— Regulation 2(8) inserts regulation 3(7A) into the 2008 Regulations. Paragraph (7A) provides that documents sent electronically are considered served immediately after they have been sent. This is the case except for discharge orders or notices sent by nearest relatives, which are considered served at the beginning of the next business day after the day on which they are sent.

— Regulation 2(9) replaces regulation 3(8) of the 2008 Regulations. The new paragraph (8) re-enacts the previous provision as to proof of documents, and extends it by providing that a document purporting to be signed electronically by the appropriate person will be deemed to be validly completed without further proof.

— Regulation 2(10) inserts regulation 3(9A) into the 2008 Regulations. Paragraph (9A) provides that any document which may be served on managers of a hospital may also be served on their officers who are authorised by the hospital managers to receive it.

Regulations 3, 4, 5 and 6 of these regulations amend regulations 22(2), 24, 25(2) and 26(8) of the 2008 Regulations, respectively. In each case, the purpose of the amendment is to omit text rendered unnecessary by the new regulation 3(1)(b).

Regulation 7 updates the prescribed forms set out in Schedule 1 to the 2008 Regulations. Regulation 8 makes transitional and savings provision.

A full impact assessment has not been produced for this instrument as no significant impact on the private or voluntary sector is foreseen.

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