

# **Explanatory Memorandum to the Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) (Amendment) Regulations 2012**

This Explanatory Memorandum has been prepared by the Department of Health, Social Services and Children and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

## **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) (Amendment) Regulations 2012.

**Lesley Griffiths AM**

Minister for Health and Social Services

11 May 2012

## **Description**

1. The Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) (Amendment) Regulations 2012 (“the Regulations”) make provisions which change the administrative procedures that need to be followed when a mental health patient who is subject to a community treatment order (CTO) consents to treatment. It removes the requirement for a “second opinion appointed doctor” (SOAD), appointed by Healthcare Inspectorate Wales, to certify that the treatment is appropriate in the patient’s case. The change is being made in the light of experience of operating the arrangements for supervised community treatment (SCT) which were introduced into the Mental Health Act 1983 (the 1983 Act) by the Mental Health Act 2007 on 3 November 2008; and which will be amended by section 299 of the Health and Social Care Act 2012 with effect from 1 June 2012.

## **Matters of special interest to the Constitutional and Legislative Affairs Committee**

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2. There are no matters of special interest to note.

## **Legislative background**

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3. These Regulations amend the Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) Regulations 2008 (S.I. 2008/2439 (W.212)) (“the 2008 Regulations”). Section 299 of the Health and Social Care Act 2012 (certificate of consent of community patients to treatment) will, from 1 June 2012, amend sections 64C and 64E of the Mental Health Act 1983 to vary the certificate requirement where the patient has capacity to consent to the treatment and has consented. Regulation 2(2) of the Regulations amends regulation 40 of the 2008 Regulations to reflect this; and Regulation 2(3) makes amendments to forms in the Schedule to the 2008 Regulations and inserts a new form, Form CO 8.

4. The Regulations are subject to the negative procedure

## **Purpose and intended effect of the legislation**

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5. When SCT was introduced on 3 November 2008 the certificate requirement was applied to SCT patients whether they consented to the treatment in question or not. This was because there were concerns about what was a new procedure and also that as patients on SCT have less frequent contact with their clinicians, changes to their capacity to consent would be spotted less quickly. Otherwise, unless it is immediately necessary, treatment without consent would require a new SOAD certificate, which could cause delay.

6. However, a similar certificate requirement has never applied to consenting patients who are still liable to be detained in hospital. This means that SCT patients have to undergo more examinations, which is inequitable. This perception of

inequity and unnecessary duplication may be a significant part of the explanation for the degree of SCT patients' non-compliance with SOAD appointments.

7. In addition to its more exacting certificate requirement, the take-up of SCT has been far faster than forecast. This resulted in larger than anticipated demand for SOAD opinions, which has put considerable pressure on the SOAD service and has resulted in a backlog of requests for SOAD visits. This means that patients for whom the SOAD opinion is important may be kept waiting for it while opinions are given to those for whom it is less significant.

8. The changes introduced by section 299 of the 2012 Act will mean that where SCT patients consent to treatment they will no longer have to undergo an additional examination by a SOAD. This will reduce administrative burdens on local mental health services. As the SOAD system has been struggling to cope with the demand for second opinions, we do not expect this proposal to achieve significant financial savings. It will target the available resources more efficiently and effectively on the people for whom a SOAD opinion is most significant and appropriate.

9. SCT enables people who have been detained in hospital for treatment under the 1983 Act to continue their treatment in the community under a CTO once they are sufficiently recovered. One of the requirements put in place in 2008 was that an SCT patient could not be given specified treatment unless a SOAD had certified on a statutory form that the treatment was appropriate in the patient's case. This is known as the "certificate requirement".

10. When SCT was introduced, the SOAD opinion was required for SCT patients who consented to their treatment, whether or not they had the capacity or competence to consent, as well as those who did not. The change introduced by section 299 will remove the requirement for a SOAD opinion in the case of competent consenting SCT patients. This will remove a generally unwelcome burden off mentally ill people, as well as reducing bureaucracy within mental health services.

11. As a consequence, the Regulations can therefore change the administrative procedures set out in the principal Regulations by inserting a new form to reflect the changes that will be made by section 299.

## **Consultation**

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12. No formal consultation on the amendment regulations has been undertaken, but the proposals were discussed with various mental health organisations and others before the relevant provision was included in what is now the Health and Social Care Act 2012. Healthcare Inspectorate Wales have advised on the amendments made by the Regulations.

## **Regulatory Impact Assessment**

13. The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely

costs and benefits of complying with these Regulations. The regulations make an administrative change to introduce an alternative form to give effect to the parent legislation, as amended by section 299 of the Health and Social Care Act 2012. This will achieve a reduction in the number of SOAD opinions required for SCT patients.