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WELSH STATUTORY INSTRUMENTS

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**2008 No. 2439**

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

**PART 3**

Procedures and Records relating to Guardianship

**Procedure for and acceptance of guardianship applications**

- 9.—(1) For the purposes of applying for guardianship under section 7—
- (a) an application for guardianship must be in the form set out—
    - (i) where made by the nearest relative, in Part 1 of Form GU 1,
    - (ii) where made by an approved mental health professional, in Part 1 of Form GU 2;
  - (b) where a person named as guardian will be a private guardian, the statement by that person that he or she is willing to act must be in the form set out in Part 2 of Form GU 1 or, as the case may be, Part 2 of Form GU 2;
  - (c) any medical recommendation must be in the form set out —
    - (i) in the case of a joint recommendation, in Form GU 3,
    - (ii) in any other case, in Form GU 4.
- (2) For the purposes of any medical recommendation under section 7 in the case of—
- (a) a single recommendation made in respect of a patient whom a doctor has examined in England, the medical recommendation must be in the form required by Regulations made by the Secretary of State to similar effect for England;
  - (b) joint recommendations made in respect of a patient whom both doctors have examined in England, the medical recommendation must be in the form required by Regulations made by the Secretary of State to similar effect for England;
  - (c) joint recommendations made in respect of a patient whom one doctor has examined in Wales and one doctor has examined in England, the medical recommendation must either be in the form required by these Regulations or in the form required by Regulations made by the Secretary of State to similar effect for England.
- (3) Where an application made under section 7 is accepted by the responsible local social services authority it must record its acceptance of the application in the form set out in Form GU 5, which must be attached to the application.

**Visits to patients subject to guardianship**

10. The responsible local social services authority must arrange for every patient received into guardianship under 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 must be made by an approved clinician or a practitioner approved by the Welsh Ministers for the purposes of section 12 (general provisions as to medical recommendations).

### **Duties of private guardians**

**11.**—(1) It is 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 conferred or imposed upon the private guardian by the Act and these Regulations, to comply with such directions as the responsible local social services authority may give;
- (d) to furnish that authority with all such reports or other information with regard to the patient as the responsible local social services authority may from time to time require;
- (e) to notify the responsible local social services authority—
  - (i) on the reception of the patient into guardianship, of his or her 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) where on any permanent change of his or her address, the new address is in the area of a different local social services authority, to notify both that authority and the authority which was formerly responsible of—
  - (i) his or her address and that of the patient,
  - (ii) the particulars mentioned in paragraph (b); 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 of the same as soon as reasonably practicable.

(2) Any notice, reports or other information under this regulation may be given or furnished in any other way (in addition to the methods of serving documents provided for by regulation 3(1)) to which the relevant local social services authority agrees, including orally or by electronic communication.

### **Renewal of guardianship**

**12.** For the purposes of renewing guardianship—

- (a) any report made under section 20(6) (report renewing guardianship) must be in the form set out in Part 1 of Form GU 6;
- (b) any renewal of authority for guardianship under section 20(8) must be recorded by the responsible local social services authority in the form set out in Part 2 of Form GU 6.

### **Guardianship after absence without leave for more than 28 days**

**13.** In relation to the return of a patient subject to guardianship who is taken into custody or returns after absence without leave after more than 28 days—

- (a) any report made under section 21B(2) (authorisation for guardianship of patients who are taken into custody or return after more than 28 days) must be in the form set out in Part 1 of Form GU 7;

- (b) the receipt of that report must be recorded by the responsible local social services authority in the form set out in Part 2 of Form GU 7.

#### **Discharge of patients subject to guardianship by responsible clinicians or responsible local social services authorities**

**14.** Any order made by the responsible clinician or responsible local social services authority of the patient under section 23(2)(b) for discharge of a patient subject to guardianship under the Act must be in the form set out in Form GU 8 and in the event of the order being made by the patient's responsible clinician must be served on the responsible local social services authority.

#### **Provision of information – patients subject to guardianship**

**15.—(1)** Upon a patient becoming subject to guardianship under the Act, the responsible local social services authority must take such steps as are practicable to cause to be informed both the patient and the person (if any) appearing to the authority to be the patient's nearest relative of the rights referred to in paragraph (2).

(2) The rights are—

- (a) the patient's right to apply to a Tribunal under section 66 ;
- (b) the nearest relative's right, as the case may be, to—
  - (i) discharge the patient under section 23 , or
  - (ii) apply to a Tribunal under section 69 (where the patient is, or is treated as being, subject to guardianship under section 37 ).

(3) Where information referred to in paragraph (1)—

- (a) is to be given to the patient, it must be given both orally and in writing;
- (b) is to be given to the nearest relative it must be given in writing.

(4) Unless the patient requests otherwise, where—

- (a) a patient's guardianship is renewed pursuant to a report furnished under section 20, the responsible local social services authority must take such steps as are reasonably practicable to cause the person (if any) appearing to it to be the patient's nearest relative to be informed of that renewal as soon as practicable following the decision of the responsible local social services authority not to discharge the patient;
- (b) by virtue of section 21B(7) a patient's guardianship is renewed pursuant to a report furnished under section 21B(2), the responsible local social services authority must take such steps as are reasonably practicable to cause the person (if any) appearing to it to be the patient's nearest relative to be informed of that renewal as soon as practicable following the decision of the responsible local social services authority not to discharge the patient;
- (c) by virtue of section 21B(5) and (6) a patient's guardianship is renewed retrospectively pursuant to a report furnished under section 21B(2), the responsible local social services authority must take such steps as are reasonably practicable to cause the person (if any) 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 responsible local social services authority of that report.

(5) Where paragraph (4)(b) or (c) applies, the responsible local social services authority must, as soon as practicable inform the private guardian (if any) of its receipt of a report furnished under section 21B.