

## Mental Health Act detaining authorities

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## The Mental Health (Hospital, Guardianship and Treatment) (England) (Amendment) Regulations 2020 – a practical guide

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### Summary of Changes

- The Regulations apply in relation to England only
- The Regulations amend the Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008 (S.I. 2008/1184) (the '2008 Regulations') to allow for the use of electronic means of communication for the sending and receipt of documents under the Act. In particular the amendments to the 2008 Regulations allow for statutory forms to be served by email. The instrument also makes consequential amendments to the existing statutory forms. Previously, physical forms with 'wet signatures' were required in order for service to be valid.
- The 2008 Regulations, as amended, provide that the authority, body or person on whom the form is served must agree to receive the form electronically. However, with regards to an application for the admission of a patient to hospital by an AMHP, the application can be sent electronically, regardless of whether the relevant hospital manager agrees.
- A further exception is that documentation given to patients under the Act, including through these statutory forms, must be provided in hard copy, although electronic versions may be given in addition to this. This is because patients may not have consistent and reliable access to the required technology. An example of a document which cannot be served on patients electronically is a form recalling to hospital a patient subject to a Community Treatment Order
- The explanatory memorandum states *"practical guidance to assist stakeholders in applying the changes made by this instrument will be published before the amendments come into force. This guidance will, among other topics, discuss common understandings, agreements and working protocols which organisations will need to establish locally"*
- The explanatory memorandum gives the contact for any queries as Hannah Coaker at the Department of Health and Social Care. Telephone: 0207 972 2702 or email: [Hannah.Coaker@dhsc.gov.uk](mailto:Hannah.Coaker@dhsc.gov.uk) can be contacted with any queries regarding the instrument.
- The explanatory memorandum can be accessed at the [here](#).
- The new Regulations can be accessed [here](#).

### Timeframes and Practical Implications

- "signed" now includes using an electronic signature; documents purporting to have been signed electronically by the appropriate individual will be deemed to have been validly signed without the need for further proof.
- The wording "delivering it to" has been amended to include "sending it by means of electronic communication"

- Where an order or notice is delivered electronically, the Regulations specify that all documents sent electronically will be deemed to have been served immediately after they have been sent, except for discharge orders or notices sent by nearest relatives. These are considered to have been served at the beginning of the next business day after the day on which they are sent.
- The Regulation sets out the new amended wording to the statutory forms in the Amendment of Schedule 1 (amends to existing statutory forms)
- From 1.12.10- 31.1.21 inclusive, detaining authorities can still use the “old” forms if not serving the papers electronically. However, if the papers are being served electronically, the forms must include the new statutory wording to be lawful
- From 1.2.21 detaining authorities are required to use the new wording on all forms

## Further Practical Considerations:

- Usually detaining authorities must agree to accept electronic delivery, but an AMHP can send an application for admission electronically which is permitted even if the detaining authority doesn’t agree.
- It is important that the MHA Administrator checks that the correct wording is on the form for those cases where papers are served/delivered electronically and factors in when service is considered to have taken place in determining statutory time limits.
- Documentation given to patients must be done so by hard copy (but can also be provided electronically as well)
- From 1.2.21 all the forms used must have the new wording
- The new forms can be accessed [here](#).

## Comment

This shift towards electronic forms of communication is likely to prove helpful in the current climate, in light of the restrictions imposed as a result of COVID-19. It is also more reflective of technological developments in the modern world. Overall, this is a welcome development which should streamline processes for mental health providers in an already complex and challenging area.

Our team is able to provide advice on all aspects of the Mental Health Act, including the impact of these changes should you have any queries.

## Contact



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