

Tomas Adell
Mental Health and Capacity Unit



To:
The Attorney General for Northern Ireland
Chief Executive HSC Trusts
Chief Executive HSC Board
Chief Executive PHA
Chief Executive RQIA
Chief Executive Patient and Client Council
Business Services Organisation
Royal College of Psychiatry (NI Division)
British Association of Social Workers (NI)
Royal College of Nursing (NI)
British Medical Association

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Our Ref: HSC circular MHCU 3/20

21 July 2020

Dear Colleague,

**RETURN OF PRE-COVID-19 MENTAL HEALTH LEGISLATION AND GUIDANCE
AND
AMENDMENTS TO MENTAL HEALTH ORDER FORM 10**

1. The purpose of this circular is to make you aware of changes to mental health processes as part of the resumption of normal service post-COVID-19 and to make you aware of changes to Mental Health Order form 10.
2. The circular provides advice on:
 - a. The Coronavirus Act 2020;
 - b. Second opinions including Mental Health Order form 23;
 - c. COVID-19 mental health guidance;
 - d. Mental Health Order form 10; and
 - e. Next steps.
3. This circular is a follow up to HSC circular MHCU 1/20 and 2/20. The relevant statutes are:
 - a. Mental Health (Northern Ireland) Order 1986;
 - b. The Coronavirus Act 2020 (Suspension) Order (Northern Ireland) 2020;
 - c. The Mental Health (1986 Order) (Amendment No. 2) Order (Northern Ireland) 2020; and
 - d. The Mental Health (Nurses, Guardianship, Consent to Treatment and Prescribed Forms) (Amendment) Regulations (Northern Ireland) 2020.

The Coronavirus Act 2020

4. Section 10 of the Coronavirus Act 2020 and Schedule 10 to the Act make provisions for temporary modifications to the Mental Health (Northern Ireland) 1986 Order (the 1986 Order). The modifications relax some of the requirements for compulsory treatment, admission and detention to ensure it is operationable during the Coronavirus pandemic. The Act was commenced for the purpose of the 1986 Order on 2 April 2020. HSC circular MHCU 2/20 refers.
5. In cooperation with the HSC Trusts, the HSC Board, PHA and others, the Department has considered the need to keep the amendments in the Coronavirus Act live, insofar as they relate to the 1986 Order. The Department has subsequently decided to suspend Part 2 of Schedule 10 to the Coronavirus Act (and related provisions in section 10(3) and Part 1 of Schedule 10).
6. The Coronavirus Act 2020 (Suspension) Order (Northern Ireland) 2020 was made on 15 July 2020 and comes into force on 10 August 2020.
7. The suspension includes all temporary amendments to the Mental Health Order found in the Coronavirus Act, including the temporary Code of Practice.
8. **As of 10 August 2020 all amendments are therefore stood down and the temporary Code of Practice has no statutory force.**
9. Transitional arrangements in the Suspension Order allows for decisions made in reliance of the provisions before the suspension to be valid after 10 August 2020.

Second Opinions

10. To ensure that the system of second opinions remained operational a number of temporary changes were made to the timelines for second opinion and requirements of a Part IV appointed doctor in anticipation of significant pressures due to the pandemic. HSC circular MHCU 1/20 refers.

Timeline for second opinions

11. Article 64(1)(b) of the 1986 Order requires continued administration of medication to detained patients to be approved by a Second Opinion Appointed Doctor after a certain time period. In anticipation of COVID-19 pressures the Department in March amended this time period from 3 to 6 months.
12. **The Department has now decided to revert this time period to 3 months with effect from 10 August 2020** and has made the Mental Health (1986 Order) (Amendment No. 2) Order (Northern Ireland) 2020.

Requirements of a Part IV appointed doctor

13. Article 64(3) of the 1986 Order requires the second opinion appointed doctor to be appointed by the RQIA for the purpose of Part IV of the Order. Article 64(4)

also allows the second opinion appointed doctor to be a doctor appointed for the purpose of Part II of the Order.

14. In 2014 the Department issued guidance in relation to second opinions. HSC circular MHU 1/14 refers. Paragraphs 8 to 15 of the circular noted that for the integrity of second opinions, the SOAD must be appointed for the purpose of Part IV and Part II appointed doctors should not be used for second opinions, unless in exceptional circumstances. An amended form 23 was also provided.
15. In light of the COVID-19 pressures the Department temporarily set aside the requirement in HSC circular MHU 1/14 and provided an amended form 23 for this purpose (HSC circular 1/20 refers).
16. **The Department has now decided to revert to pre-COVID-19 procedures for second opinions and the guidance in HSC circular MHU 1/14 applies with effect 10 August 2020.**
17. In HSC circular MHU 1/14 a new form 23 was provided. This form has now been updated and given statutory status through the Mental Health (Nurses, Guardianship, Consent to Treatment and Prescribed Forms) (Amendment) Regulations (Northern Ireland) 2020.
18. The new form 23 can be found in Annex A to this circular. The form can also be downloaded in word or PDF format from the Department's website and can be obtained by contacting the Mental Health and Capacity Unit.
19. **The new form 23 must be used from 10 August 2020 and all old form 23 must be destroyed.**

COVID-19 mental health guidance

20. On 15 April 2020 the Department issued relating to restraint and seclusion and COVID-19; "*COVID-19: The Safe and Legal Use of Restraint and Seclusion in Mental Health and Learning Disability Services during the Coronavirus Period*". This guidance is still valid and in force.
21. In April the Department issued guidance in relation to the medical recommendation required by Article 6 of the 1986 Order; "*Application for assessment – medical recommendation*". This guidance is still valid and in force.

Interpretation of 'personally seen' and 'personally examined'

22. In the temporary Mental Health Order Code of Practice, the Department provided statutory guidance in relation to "personally seen" and "personally examined" in light of the infections risks relating to COVID-19. As of 10 August the temporary Code of Practice is no longer in force and the guidance around the COVID-19 interpretation is no longer in force.

23. The Department recognises the need to consider infection risks with COVID-19 and is therefore providing guidance around “personally seen” and “personally examined”.
24. On a number of occasions, the 1986 Order requires a person to have ‘personally seen’ or ‘personally examined’ a patient before making an application or report¹. The expectation is that this means the person making the application or report will have visited the patient and have had a face to face interview with them.
25. During the COVID-19 period, it is expected that, in most cases, it will be necessary to continue to personally see or examine someone in order to make a sound professional assessment and judgement on the right course of action.
26. However, the 1986 Order Code of Practice notes in paragraph 2.6 that good communication with the patient is essential, but that the patient may be interviewed through a closed door or window ‘where it is necessary to avoid serious risk to other people’.
27. Therefore, during time where enhanced infection control provisions are in place, alternative methods of communication such as Facetime or Skype may be considered **in exceptional circumstances** where an assessment of the risk involved indicates it is reasonable to do so. The use of barriers or screens, perhaps in a ward environment, may also potentially be justified, again in these exceptional circumstances.
28. **At all times the professional making the application or report must be satisfied that any alternative methods used allow them to exercise sufficient professional judgement.**

Mental Health Order form 10

29. During 2019 the RQIA conducted an audit of the use of Mental Health Order form 10. One of the conclusions of the audit was that the existing form 10 is not conducive to encouraging the user to fill it out correctly.
30. The RQIA therefore worked with the HSC Trusts, HSC Board and the Royal College of Psychiatry in considering how the form could be reshaped.
31. A new form 10 has therefore been created. The new form 10 requires the same information but in a format that is more likely to be filled out correctly. The Department has made statutory amendments through the Mental Health (Nurses, Guardianship, Consent to Treatment and Prescribed Forms) (Amendment) Regulations (Northern Ireland) 2020.

¹ An applicant must have ‘personally seen’ the patient when making an application for compulsory admission to hospital (Article 5(2)) or when making an application for guardianship (Article 19(2)). A medical practitioner must have ‘personally examined’ the patient when making a medical recommendation for compulsory admission to hospital (Article 6(a)) or when making a medical recommendation for guardianship (Article 20(1)(a)).

32. The new form 10 can be found in Annex A to this circular. The form can also be downloaded in word format from the Department's website and can be obtained by contacting the Mental Health and Capacity Unit.
33. **The new form 10 must be used from 10 August 2020 and all old form 10 must be destroyed.**

Required actions

34. All organisations should ensure that all relevant staff are aware of the information in this circular.
35. HSC Trusts are required to ensure that the new forms 10 and 23 are used from 10 August and that all existing forms are replaced. The HSC Trusts are also requested to confirm to the Department (using the contact details below) before 10 August 2020 that the information has been shared as appropriate and that the forms have been replaced.
36. For further information please contact Mental Health and Capacity Unit in the Department of Health. Points of contact are
Mental Health and Capacity Unit: mentalhealthunit@health-ni.gov.uk
or
Tomas Adell tomas.adell@health-ni.gov.uk

Yours sincerely



Dr. Tomas Adell, PhD
Mental Health and Capacity Unit

Copied to:

HSC Trust relevant Directors and Assistant Directors

**MEDICAL REPORT
 FOR DETENTION FOR TREATMENT**

(name and address of responsible authority)

To

(full name of patient)

--

(name of hospital)

was compulsory admitted to

--

(date)

on

--

(full name and professional address of medical practitioner)

I

, a medical practitioner appointed for the purposes of Part II of the Mental Health (Northern Ireland) Order 1986 by the Regulation and Quality Improvement Authority, examined this patient

(date)

on

--

In my opinion –

(a) this patient is suffering from

***(delete if not applicable)**

- *mental illness
- *severe mental impairment

of a nature or degree which warrants his/her detention in hospital for medical treatment;

(give a clinical description of the patient's mental condition)

My opinion at (a) above is based on the following evidence:-

Please turn over

AND

- (b) failure to so detain him/her would create a substantial likelihood of serious physical harm to himself/herself or to other persons.

My opinion at (b) is based on the following grounds:-

[Have regard only to evidence (**all options referenced must be evidenced in the text below**):-]

- (i) that the patient has inflicted, or threatened or attempted to inflict, serious physical harm on himself/herself;

OR

- (ii) that the patient's judgement is so affected that he/she is, or would soon be, unable to protect himself/herself against serious physical harm and that reasonable provision for his/her protection is not available in the community;

OR

- (iii) that the patient has behaved violently towards other persons;

OR

- (iv) that the patient has so behaved himself/herself that other persons were placed in reasonable fear of serious physical harm to themselves.]

Please turn over

**CERTIFICATE OF SECOND OPINION
(Treatment Requiring Consent or Second Opinion)**

(Full name and professional address)

I	

am a medical practitioner appointed for the purpose of

*(Delete whichever does not apply)

OR

*Part IV of the Mental Health (Northern Ireland) Order 1986 by the Regulation and Quality Improvement Authority.

*Part II of the Mental Health (Northern Ireland) Order 1986 by the Regulation and Quality Improvement Authority.

** (delete if not appropriate)

**A medical practitioner appointed for the purposes of Part IV of the Mental Health (Northern Ireland) Order 1986 by the Regulation and Quality Improvement Authority has not been consulted due to the following exceptional circumstances:

(details of the exceptional circumstances)

(Full name, address and status of person(s) consulted)

I have consulted	

who appear(s) to me to be principally concerned with the medical treatment of

(Full name and address, date of birth and HSC number of the patient)

Date of Birth:
HSC number:

I certify that this patient–

*** (Delete whichever does not apply)

- (a) *** is not capable of understanding the nature, purpose and likely effect of
- OR
- (b) *** has not consented to

(Give description of treatment or plan of treatment)

but that, having regard to the likelihood of that treatment alleviating or preventing a deterioration of the patient's condition, it should be given.

The treatment plan detailed above is clinically defensible and effective; consideration has been given to the views and rights of the patient.

I agree to the above treatment plan. My reasons are as stated below:

(provide reasons why the plan is agreed to)

I am not the responsible medical officer for this patient.

Signed: _____

Dated: _____