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MENTAL HEALTH
(COMPULSION AND RESTRICTION ORDERS)

S.R.O.

COUNTRY X

STATUTORY RULES AND ORDERS NO. OF 20[]

REGULATIONS

Made by Cabinet under section [] of the [Relevant Mental Health Act]

(Gazetted)

Short title

1. These Regulations may be cited as -

MENTAL HEALTH (COMPULSION AND RESTRICTION ORDERS)
REGULATIONS, 20[].

Interpretation

2. (1) In these Regulations -

“compulsion order” means an order made by the court under section [13 of the Criminal Investigation and Procedure Act];

“restriction order” means an order made by the court under section [15 of the Criminal investigation and Procedure Act];

“Board” means the Board of Visitors under the [Relevant Mental Health Act]

(2) Any reference to modifying the measures specified in a compulsion order includes a reference to—

- (a) amending the measures;
- (b) removing from the order any measure; or
- (c) adding to the order any measure.

Duty of mental health officer to identify named person

3. Where a compulsion order and a restriction order are made in respect of a patient the mental health officer shall, as soon as practicable after the compulsion order is made, take such steps as are reasonably practicable to ascertain the name and address of the patient's named person.

Review of compulsion order and restriction order

4. (1) Where a patient is subject to a compulsion order and a restriction order, the patient's consultant psychiatrist shall, during the period of two months ending with the relevant day, carry out a review in respect of both the compulsion order and restriction order by complying with the requirements set out in subregulation (2).

(2) The requirements under subregulation (1) are—

(a) to—

- (i) carry out a medical examination of the patient; or
- (ii) make arrangements for a medical practitioner to carry out such a medical examination;

(b) to consider—

- (i) whether the conditions under subregulation (3) continue to apply in respect of the patient;
- (ii) whether, as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment;
- (iii) whether it continues to be necessary for the patient to be subject to the compulsion order; and
- (iv) whether it continues to be necessary for the patient to be subject to the restriction order; and

(c) to consult the mental health officer.

(3) The conditions under subregulation (2)(b)(i) are that—

- (a) the patient has a mental disorder;

- (b) medical treatment which would be likely to –
 - (i) prevent the mental disorder worsening; or
 - (ii) alleviate any of the symptoms, or effects, of the disorder, is available for the patient; and
- (c) if the patient were not provided with such medical treatment there would be a significant risk to the –
 - (i) health, safety or welfare of the patient; or
 - (ii) safety of any other person.
- (4) In subregulation (1), the “relevant day” means –
 - (a) the day which falls twelve months after the day on which the compulsion order is made; or
 - (b) where that relevant day has passed, the day falling on the same day in every subsequent year.

Consultant psychiatrist’s report and recommendation following review of compulsion order and restriction order

5. (1) Where a patient’s consultant psychiatrist or a medical practitioner carries out a review under regulation 4, the consultant psychiatrist or medical practitioner shall, as soon as practicable after carrying out that review, submit a report in accordance with subregulation (2) to the Minister.
- (2) The report referred to under subregulation (1) must record the consultant psychiatrist’s or medical practitioner’s views as to –
- (a) whether the conditions under regulation 4(3) continue to apply in respect of the patient;
 - (b) whether, as a result of the patient’s mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment;
 - (c) whether it continues to be necessary for the patient to be subject to the compulsion order; and

(d) whether it continues to be necessary for the patient to be subject to the restriction order.

(3) If, after having regard to any views expressed by the mental health officer, the consultant psychiatrist or medical practitioner is not satisfied that the patient has a mental disorder, the consultant psychiatrist or medical practitioner shall include in the report submitted to the Minister under subregulation (1) a recommendation that the compulsion order be revoked.

(4) If, after having regard to any views expressed by the mental health officer, the consultant psychiatrist or medical practitioner is satisfied that the patient has a mental disorder but is not satisfied that –

- (a) as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment; and
- (b) the conditions under paragraphs (b) and (c) of regulation 4(3) continue to apply in respect of the patient;

the consultant psychiatrist or medical practitioner shall include in the report submitted under subregulation (1) a recommendation that the compulsion order be revoked.

(5) If, after having regard to any views expressed by the mental health officer, the consultant psychiatrist or medical practitioner –

- (a) is satisfied that –
 - (i) the conditions under regulation 4(3) continue to apply in respect of the patient; and
 - (ii) it continues to be necessary for the patient to be subject to the compulsion order; but
- (b) is not satisfied that –
 - (i) as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment; and
 - (ii) it continues to be necessary for the patient to be subject to the restriction order,

the consultant psychiatrist or medical practitioner shall include in the report submitted to the Minister under subregulation (1) a recommendation that the restriction order be revoked.

(6) If, after having regard to any views expressed by the mental health officer, the consultant psychiatrist or medical practitioner –

(a) is satisfied that –

(i) the conditions under regulation 4(3) continue to apply in respect of the patient; and

(ii) it continues to be necessary for the patient to be subject to the compulsion order and the restriction order; but

(b) is not satisfied that, as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment;

the consultant psychiatrist or medical practitioner may include in the report submitted to the Minister under subregulation (1) a recommendation that the patient be conditionally discharged.

(7) Where the consultant psychiatrist or medical practitioner –

(a) submits a report under subregulation (1) that includes a recommendation under subregulation (5); and

(b) is satisfied that the compulsion order should be varied by modifying the measures specified in it,

the consultant psychiatrist or medical practitioner shall include in the report a recommendation that the compulsion order be varied in that way.

Consultant psychiatrist's duty to keep compulsion order and restriction order under review

6. (1) Without prejudice to the duty imposed on the patient's consultant psychiatrist under regulation 4(1), the consultant psychiatrist shall from time to time consider –

(a) whether the conditions under regulation 4(3) continue to apply in respect of the patient;

- (b) whether, as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment;
- (c) whether it continues to be necessary for the patient to be subject to the compulsion order; and
- (d) whether it continues to be necessary for the patient to be subject to the restriction order.

(2) If, having considered the matters mentioned in paragraphs (a) to (d) of subregulation (1), the consultant psychiatrist is not satisfied that the patient has a mental disorder, the consultant psychiatrist shall, as soon as practicable after considering those matters, submit to the Minister a report complying with the requirements set out in regulation 5(2) and including a recommendation that the compulsion order be revoked.

(3) If, having considered the matters mentioned in paragraphs (a) to (d) of subregulation (1), the consultant psychiatrist is satisfied that the patient has a mental disorder but is not satisfied that—

- (a) as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment; and
- (b) the conditions under paragraphs (b) and (c) of regulation 4(3) continue to apply in respect of the patient,

the consultant psychiatrist shall, as soon as practicable after considering those matters, submit to the Minister a report complying with the requirements set out in regulation 5(2) and including a recommendation that the compulsion order be revoked.

(4) If, having considered the matters mentioned in paragraphs (a) to (d) of subregulation (1), the consultant psychiatrist—

- (a) is satisfied that —
 - (i) the conditions under regulation 4(3) continue to apply in respect of the patient; and
 - (ii) it continues to be necessary for the patient to be subject to the compulsion order; but

(b) is not satisfied that—

- (i) as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment; and
- (ii) it continues to be necessary for the patient to be subject to the restriction order;

the consultant psychiatrist shall, as soon as practicable after considering those matters, submit to the Minister a report complying with the requirements set out in regulation 5(2) and including a recommendation that the restriction order be revoked.

(5) If, having considered the matters mentioned in paragraphs (a) to (d) of subregulation (1), the consultant psychiatrist –

- (a) is satisfied that –
 - (i) the conditions under regulation 4(3) continue to apply in respect of the patient; and
 - (ii) it continues to be necessary for the patient to be subject to the compulsion order and the restriction order; but
- (b) is not satisfied that, as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment,

the consultant psychiatrist may submit to the Minister a report complying with the requirements set out in regulation 5(2) and including a recommendation that the patient be conditionally discharged.

- (6) Where the consultant psychiatrist –
 - (a) submits a report under subregulation (4); and
 - (b) is satisfied that the compulsion order should be varied by modifying the measures specified in it

the consultant psychiatrist shall include in the report a recommendation that the compulsion order be varied in that way.

Duty of Minister on receiving report from consultant psychiatrist

- 7. (1) Where a consultant psychiatrist submits to the Minister a report –

- (a) under regulation 5(2) that includes a recommendation; or
- (b) under regulation 6;

the Minister shall make a reference to the court in respect of the compulsion order and restriction order to which the patient is subject.

(2) Where a reference is made under subregulation (1), the Minister shall, as soon as practicable, give notice that a reference is to be made to—

- (a) the patient;
 - (b) the patient's named person;
 - (c) any guardian of the patient;
 - (d) the attorney of the patient;
 - (e) the patient's consultant psychiatrist;
 - (f) the mental health officer; and
 - (g) any the Mental Health Review Board.
- (3) A reference under subregulation (1) must state the—
- (a) name and address of the patient;
 - (b) name and address of the patient's named person; and
 - (c) recommendation included in the report submitted by the consultant psychiatrist or medical practitioner.

Power of Board to require Minister to make reference to court

8. (1) If it appears to the Board that it is appropriate to do so, it may, by notice in writing to the Minister, require him to make a reference to the court in respect of the compulsion order and the restriction order to which a patient is subject.

(2) Where, under subregulation (1), the Board gives notice to the Minister, the Board shall include in that notice its reasons for requiring the Minister to make the reference.

(3) The Minister shall, as soon as practicable after receiving notice under subregulation (1), make a reference to the court in respect of the compulsion order and restriction order to which a patient is subject.

(4) Where a reference is made under subregulation (3), the Minister shall, as soon as practicable, give notice that the reference is to be or, as the case may be, has been made to the persons mentioned in paragraphs (a) to (g) of regulation 7(2).

(5) A reference under subregulation (4) must state the –

- (a) name and address of the patient;
- (b) name and address of the patient's named person; and
- (c) reason given by the Board in the notice under regulation 8(1) for requiring the Minister to make the reference.

Duty of Minister to keep compulsion order and restriction order under review

9. (1) Without prejudice to the duties imposed on the Minister by regulations 7(1), 8(3) and 10(1), the Minister shall from time to time consider whether –

- (a) the conditions under regulation 4(3) continue to apply in respect of a patient;
- (b) as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for a patient to be detained in hospital, whether or not for medical treatment;
- (c) it continues to be necessary for a patient to be subject to the compulsion order; and
- (d) it continues to be necessary for a patient to be subject to the restriction order.

(2) If, having considered the matters under paragraphs (a) to (d) of subregulation (1), the Minister is not satisfied that a patient has a mental disorder, he shall apply to the court under regulation 12 for an order under regulation 14 revoking the compulsion order.

(3) If, having considered the matters under paragraphs (a) to (d) of subregulation (1), the Minister is satisfied that a patient has a mental disorder but is not satisfied that –

- (a) as a result of a patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment; and
- (b) the conditions under paragraphs (b) and (c) of regulation 4(3) continue to apply in respect of the patient,

he shall, as soon as practicable after considering those matters, apply to the court under regulation 12 for an order under regulation 14 revoking the compulsion order.

(4) If, having considered the matters under paragraphs (a) to (d) of subregulation (1), the Minister is –

- (a) satisfied that –
 - (i) the conditions mentioned in regulation 4(3) continue to apply in respect of the patient; and
 - (ii) it continues to be necessary for the patient to be subject to the compulsion order;
- (b) not satisfied that –
 - (i) as a result of a patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment; and
 - (ii) it continues to be necessary for the patient to be subject to the restriction order,

he shall apply to the court under regulation 12 for an order under regulation 14 revoking the restriction order.

(5) Where the Minister –

- (a) applies under subregulation (4), for an order revoking the restriction order; and
- (b) is satisfied that the compulsion order should be varied by modifying the measures specified in it;

he shall apply to the court under regulation 12 for an order under regulation 14 varying the compulsion order in that way.

(6) If, having considered the matters under paragraphs (a) to (d) of subregulation (1), the Minister is—

(a) satisfied that—

- (i) the conditions regulation 4(3) continue to apply in respect of a patient; and
- (ii) it continues to be necessary for a patient to be subject to the compulsion order and the restriction order;

(b) not satisfied that, as a result of a patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment;

he may apply to the court under regulation 12 for an order under regulation 14 conditionally discharging the patient.

Reference to court by Minister

10. (1) If—

(a) during the period of two years ending with the relevant day —

- (i) a reference under regulation 7(1) or 8(3) has not been made to the court; and
- (ii) an application under regulation 12 or 13 has not been made to the court; and

(b) during each period of two years ending with the anniversary, in every subsequent year, of the relevant day —

- (i) a reference under paragraph (a)(i) or, subject to subregulation (4), under this subregulation has not been made to the court; and
- (ii) an application under paragraph (a)(ii) has not been made to the court;

the Minister shall make a reference to the court in respect of the compulsion order and restriction order to which the patient is subject.

(2) The Minister shall, in considering, under subregulation (1)(b)(i), whether a reference has been made to the court during any one year period, leave out of account any reference made under subregulation (1) during the first year of that two year period.

(3) Where a reference is made under subregulation (1), the Minister shall, as soon as practicable, give notice that a reference is to be or, as the case may be, has been made to the persons under paragraphs (a) to (g) of regulation 7(1).

(4) A reference under subregulation (1) must state the –

- (a) name and address of the patient;
- (b) name and address of the patient’s named person; and
- (c) reason for making the reference.

(5) In subregulation (1), “relevant day” means the day which falls two years after the day on which the compulsion order is made.

Application by Minister: notification

11. Where, under regulation 9, an application is to be made under regulation 12, the Minister shall, as soon as practicable after the duty to make the application arises, give notice to the persons under paragraphs (a) to (g) of regulation 7(1) that the application is to be or, as the case may be, has been made.

Application to court

12. An application under this regulation to the court by the Minister for an order under regulation 14 must –

- (a) state the –
 - (i) name and address of the patient;
 - (ii) name and address of the patient’s named person;
 - (iii) order sought;
 - (iv) modification of the measures specified in the compulsion order that is proposed by the Minister; and
 - (v) reasons for seeking that modification; and
- (b) be accompanied by such documents as may be prescribed.

Application to court by patient and named person

13. (1) Each of the persons under subregulation (2) may, subject to subregulations (3) and (4), make an application under this regulation to the court for an order under regulation 14 –

- (a) conditionally discharging the patient;
- (b) revoking the restriction order to which the patient is subject;
- (c) revoking the restriction order and varying the compulsion order by modifying the measures specified in it; or
- (d) revoking the compulsion order to which the patient is subject.

(2) The persons under subregulation (1) are the –

- (a) patient; and
- (b) patient's named person.

(3) An application under this regulation may not be made during the period of

- (a) six months beginning with the making of the compulsion order;
- (b) three months beginning with the making –
 - (i) of an order in respect of the compulsion order made under regulation 14; or
 - (ii) under regulation 15, by the court of a decision to make no order under that regulation.

(4) Neither of the persons under subregulation (2) may make more than one application under this regulation during –

- (a) the period of twelve months beginning with the day on which the compulsion order was made; or
- (b) any subsequent period of twelve months that begins with or with an anniversary of the expiry of the period of twelve months under paragraph (a).

(5) Where a patient's named person makes an application under subregulation (1), the named person shall give notice to the patient of the making of the application.

Powers of court on reference or application

14. (1) Where –

(a) an application is made under regulation 12 or 13; or

(b) a reference is made under regulation 7(1), 8(3) or 10(3);

if the court is satisfied that the patient has a mental disorder and that, as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment, it shall not make an order under this regulation.

(2) If the court is not satisfied that the patient has a mental disorder, the court shall make an order revoking the compulsion order.

(3) If the court is satisfied that the patient has a mental disorder but is not satisfied that –

(a) as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment; and

(b) the conditions under paragraphs (b) and (c) of regulation 4(3) continue to apply in respect of the patient;

it shall make an order revoking the compulsion order.

(4) If the court is –

(a) satisfied that –

(i) the conditions under regulation 4(3) continue to apply in respect of the patient; and

(ii) it continues to be necessary for the patient to be subject to the compulsion order;

(b) not satisfied that –

(i) as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment; and

(ii) it continues to be necessary for the patient to be subject to the restriction order,

it shall make an order revoking the restriction order.

(5) If the court –

(a) makes an order, under subregulation (4), revoking the restriction order; and

(b) is satisfied that the compulsion order should be varied by modifying the measures specified in it,

it shall make an order varying the compulsion order in that way.

(6) If the court is –

(a) satisfied that –

(i) the conditions under regulation 4(3) continue to apply in respect of a patient; and

(ii) it continues to be necessary for the patient to be subject to the compulsion order and the restriction order; but

(b) not satisfied that –

(i) as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment; and

(ii) it is necessary for the patient to be detained in hospital;

the court may make an order that the patient be conditionally discharged and impose such conditions on that discharge as it thinks fit.

(7) Before making a decision under this regulation the court shall –

(a) afford the persons under subregulation (8) the opportunity of –

(i) making representations, whether orally or in writing; and

- (ii) leading, or producing, evidence; and
 - (b) whether or not any such representations are made, hold a hearing.
- (8) The persons under subregulation (7) are —
- (a) the patient;
 - (b) the patient's named person;
 - (c) the patient's primary carer;
 - (d) any guardian of the patient;
 - (e) any attorney of the patient;
 - (f) any curator ad litem appointed by the court in respect of the patient;
 - (g) the Minister;
 - (h) the patient's consultant psychiatrist;
 - (i) the mental health officer; and
 - (j) any other person appearing to the court to have an interest.

Powers of court etc. when varying compulsion order

15. Where the court makes an order under regulation 14(5) varying a compulsion order, the court shall specify in its order the modifications made by its order to the measures specified in the compulsion order.

Deferral of conditional discharge

16. Where the court makes an order under regulation 14(6) conditionally discharging a patient, it may defer that discharge until such arrangements as appear to the court to be necessary for that purpose have been made.

General effect of orders

17. Where the court makes an order under regulation 14 —
- (a) revoking a compulsion order;

- (b) revoking a restriction order;
- (c) conditionally discharging a patient; or
- (d) varying a compulsion order by modifying the measures specified in it,

the order does not have effect until the expiry of any appeal period.

Effect of revocation of compulsion order

18. Where the court makes an order under regulation 14(2) or (3) revoking a compulsion order, the restriction order to which the patient is subject ceases to have effect.

Effect of revocation of restriction order

19. Where the court –

- (a) makes an order under subregulation (4) of regulation 14 revoking the restriction order to which the patient is subject; but
- (b) does not make an order under subregulation (2) or (3) of regulation 14 revoking the compulsion order to which the patient is subject,

the compulsion order does not cease to have effect.

Variation of conditions imposed on conditional discharge

20. (1) Where –

- (a) a patient has been conditionally discharged by the court under regulation 14; and
- (b) the court imposed conditions on that discharge under that regulation,

the Minister may, if he is satisfied that it is necessary, vary such of the conditions imposed by the court under regulation 14(6) as he thinks fit.

(2) Where the Minister varies, under subregulation (1), conditions imposed by the court under regulation 14(6), the Minister shall, as soon as practicable, give notice of that variation to the –

- (a) patient;

- (b) patient's named person;
- (c) patient's consultant psychiatrist; and
- (d) mental health officer.

Appeal to court against variation of conditions imposed on conditional discharge

21. (1) Where the Minister varies, under regulation 20, conditions imposed by the court under regulation 14(6) on a patient who has been conditionally discharged under that regulation, the persons under subregulation (2) may, before the expiry of the period of twenty-eight days beginning with the day on which notice is given under regulation 20(2), appeal against the variation of those conditions to the court.

(2) The persons under subregulation (1) are the —

- (a) patient; and
- (b) patient's named person.

(3) Where an appeal is made to the court under subregulation (1), regulation 14 applies as if the patient had applied under regulation 13 for an order conditionally discharging the patient.

Recall of patients from conditional discharge

22. Where a patient is conditionally discharged by the court under regulation 14(6) if the Minister is satisfied that it is necessary for the patient to be detained in hospital, he may, by warrant, recall the patient to hospital.

Effect of recall from conditional discharge

23. Where the Minister recalls a patient to hospital under regulation 22, if the hospital specified in the warrant is not the hospital specified in the compulsion order to which the patient is subject, that order has effect as if the hospital specified in the warrant were the hospital specified in the order.

Appeal to court against recall from conditional discharge

24. (1) Where a patient has been recalled to hospital under regulation 22, each of the persons under subregulation (2) may, before the expiry of a period of twenty-eight days beginning with the day on which the patient returns or is returned to hospital, appeal against that recall to the court.

(2) The persons under subregulation (1) are the –

(a) patient; and

(b) patient's named person.

(3) Where an appeal is made to the court under subregulation (1), regulation 14 applies as if the patient had applied under regulation 13 for an order conditionally discharging the patient.

Made this day of , 20[].

DRAFT