

# **The Mental Health (Miscellaneous Provisions) (Sark) Ordinance, 2013**

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# **The Mental Health (Miscellaneous Provisions) (Sark) Ordinance, 2013**

**THE CHIEF PLEAS OF SARK**, in the exercise of the powers conferred on them by sections 100(2) and 101 of the Mental Health (Bailiwick of Guernsey) Law, 2010<sup>a</sup>, hereby order:-

## **PART I ELECTRO-CONVULSIVE THERAPY**

### **Electro-convulsive therapy in relation to patients who are aged 18 or over.**

**1.** (1) This section applies to the following forms of medical treatment for mental disorder -

- (a) electro-convulsive therapy, and
- (b) such other forms of treatment as may be prescribed,

in relation to patients who have attained the age of 18 years.

(2) Subject to section 60 of the Law, a patient shall be not be given any form of treatment to which this section applies unless he falls within subsection (3) or (4).

- (3) A patient falls within this subsection if -
- (a) he has consented to the treatment in question, and
  - (b) either the responsible medical officer in charge of the treatment or a second opinion approved doctor has certified in writing that the patient is capable of

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<sup>a</sup> Order in Council No. XV of 2011.

understanding the nature, purpose and likely effects of the treatment and has consented to it.

(4) A patient falls within this subsection if a second opinion approved doctor has certified in writing -

- (a) that the patient is not capable of understanding the nature, purpose and likely effects of the treatment, but
- (b) that it is appropriate for the treatment to be given, and
- (c) that giving him the treatment would not conflict with -
  - (i) a valid and applicable advance decision, or
  - (ii) a decision made by the Royal Court.

(5) Before issuing a certificate under subsection (4), the second opinion approved doctor concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment but, of those persons -

- (a) one shall be a nurse and the other shall be neither a nurse nor an approved medical practitioner, and
- (b) neither shall be the responsible medical officer.

(6) Before making any regulations for the purposes of this section, the Department shall consult such bodies as appear to it to be appropriate.

(7) Any certificate for the purposes of this Part shall be in such form as may be prescribed.

(8) For the purposes of this section, "**valid and applicable**" and "**advance decision**" shall have the meanings given in Part II.

### **Application of provisions of the Law to section 1.**

2. Sections 57, 58, 59 and 60 of the Law shall have effect in respect of section 1 as they have effect in relation to sections 55 and 56 of the Law.

## PART II

### TREATMENT IN THE COMMUNITY

#### Interpretation of this Part.

3. For the purposes of this Part –

- (a) "**relevant treatment**", in relation to a patient, means medical treatment which –
  - (i) is for the mental disorder from which the patient is suffering, and
  - (ii) is not a form of treatment to which section 55 of the Law applies,
- (b) "**advance decision**" has the meaning given in section 8, and
- (c) "**valid and applicable**" has the meaning given in section 9.

#### Adult community patients.

4. (1) This section applies to the giving of relevant treatment to a community patient who –

- (a) is not recalled to hospital under section 30 of the Law, and
  - (b) has attained the age of 18 years.
- (2) The treatment may not be given to that patient unless –

- (a) there is authority to give it to him, and
  - (b) the treatment is immediately necessary.
- (3) There is authority to give treatment to a patient if –
- (a) he has capacity to consent to it and does consent to it,
  - (b) the Royal Court consents to it on his behalf, or
  - (c) giving it to him is authorised in accordance with section 5.

**Adult community patients lacking capacity.**

5. (1) For the purposes of section 4(3)(c), a person is authorised to give relevant treatment to a community patient if each of the conditions in subsections (2) to (6) are met.

(2) The first condition is that, before giving the treatment, the person takes reasonable steps to establish whether the patient lacks capacity to consent to the treatment.

(3) The second condition is that, when giving the treatment, he reasonably believes that the patient lacks capacity to consent to it.

- (4) The third condition is that –
- (a) he has no reason to believe that the patient objects to being given the treatment, or
  - (b) he does have reason to believe that the patient so objects, but it is not necessary to use force against the patient in order to give the treatment.

(5) The fourth condition is that –

- (a) he is the patient's responsible medical officer, or
  - (b) the treatment is given under the direction of that medical officer.
- (6) The fifth condition is that giving the treatment does not conflict with –
- (a) a valid and applicable advance decision, or
  - (b) a decision made by the Royal Court.
- (7) Where a person is authorised to give relevant treatment to a patient under this section, he shall issue a certificate in the prescribed form.

**Child community patients.**

6. (1) This section applies to the giving of relevant treatment to a community patient who –
- (a) is not recalled to hospital under section 30 of the Law, and
  - (b) has not attained the age of 18 years.
- (2) The treatment may not be given to the patient unless there is authority to give it to him.
- (3) For the purposes of subsection (2), there is authority to give treatment to a patient if –
- (a) he is competent to consent to it and he does consent to it,
  - (b) the Royal Court consents to it on his behalf, or

- (c) giving it to him is authorised in accordance with section 7.

**Child community patients lacking capacity.**

7. (1) For the purposes of section 6(3)(c), a person is authorised to give relevant treatment to a community patient if each of the conditions in subsections (2) to (5) are met.

(2) The first condition is that, before giving the treatment, the person takes reasonable steps to establish whether the patient is competent to consent to the treatment.

(3) The second condition is that, when giving the treatment, he reasonably believes that the patient is not competent to consent to it.

(4) The third condition is that –

- (a) he has no reason to believe that the patient objects to being given the treatment, or
- (b) he does have reason to believe that the patient so objects, but it is not necessary to use force against the patient in order to give the treatment.

(5) The fourth condition is that –

- (a) he is the patient's responsible medical officer, or
- (b) the treatment is given under the direction of that medical officer.

(6) Where a person is authorised to give relevant treatment to a patient under this section, he shall issue a certificate in the prescribed form.

**Advance decisions: general.**

**8.** (1) An "**advance decision**" means a decision made by a person ("**the decision-maker**"), after he has attained 18 years of age and when he has capacity to do so, that if –

(a) at a later time and in such circumstances as he may specify, a specified treatment is proposed to be carried out or continued by an approved medical practitioner, and

(b) at that time he lacks capacity to consent to the carrying out or continuation of the treatment, the specified treatment is not to be carried out or continued.

(2) The decision-maker may alter or withdraw an advance decision at any time when he has capacity to do so.

(3) Where a decision-maker –

(a) makes,

(b) alters, or

(c) withdraws (either fully or partially),

an advance decision, that decision, alteration or withdrawal need not be in writing.

**Validity and applicability of advance decisions.**

**9.** (1) An advance decision is not valid if the decision-maker –

(a) has withdrawn the decision at a time when he had capacity to do so, or

(b) has done anything else clearly inconsistent with the advance decision remaining his fixed decision.

(2) An advance decision is not applicable to the treatment in question if at the material time the decision-maker has capacity to give or refuse consent to it.

(3) An advance decision is not applicable to the treatment in question if –

- (a) that treatment is not the treatment specified in the advance decision,
- (b) any circumstances specified in the advance decision are absent, or
- (c) there are reasonable grounds for believing that circumstances exist which the decision-maker did not anticipate at the time of the advance decision and which would have affected his decision had he anticipated them.

**Effect of advance decisions.**

**10.** (1) If the decision-maker has made an advance decision which is –

- (a) valid, and
- (b) applicable to a treatment,

the decision has effect as if he had made it, and had had capacity to make it, at the time when the question arises whether the treatment should be carried out or continued.

(2) The Royal Court may make a declaration as to whether an advance decision –

- (a) exists,

(b) is valid, and

(c) is applicable to a treatment.

(3) Nothing in an apparent advance decision stops a person doing any act he reasonably believes to be necessary to prevent a serious deterioration in the decision-maker's condition while a decision as respects any relevant issue is sought from the Royal Court.

### PART III

#### FURTHER PROVISIONS

##### *Nearest Relatives*

##### **Performance of functions etc. of nearest relative.**

**11.** (1) Subject to the notification requirement of subsection (5), any person other than -

(a) the patient,

(b) a person mentioned in section 13(5) of the Law (persons deemed not to be the nearest relative), or

(c) a person in respect of whom the court has made an order on the grounds set out in –

(i) section 16(4)(a)(ii) or (iii) of the Law, or

(ii) section 16(4)(b)(i) or (ii) of the Law,

for so long as an order under that section is in effect,

may, by prescribed notice, be authorised by the nearest relative of a patient to exercise any right or perform any function listed in section 18 of the Law on behalf of the nearest relative.

(2) Any authorisation given under subsection (1) shall take effect upon the person authorised delivering the prescribed notice to the Department.

(3) Subject to the notification requirement of subsection (5), the nearest relative of a patient may by prescribed notice revoke an authorisation given under subsection (1).

(4) A revocation of an authorisation under subsection (3) shall take effect upon the receipt of the prescribed notice by the Department.

(5) The notification requirement mentioned in subsections (1) and (3) is that the nearest relative shall immediately notify -

- (a) the patient,
- (b) in the case of a patient liable to be detained in an approved establishment, the managers of that approved establishment, and
- (c) in the case of a patient on a community treatment order, the managers of the responsible approved establishment,

of the authorisation or, as the case may be, its revocation.

*Liability to be detained*

**Meaning of 'liable to be detained'.**

**12.** (1) Subject to subsection (2), for the purposes of the Law and any subordinate legislation made by or under that Law, a patient who is "**liable to be detained**" means a patient who may be detained in an approved establishment by virtue of –

- (a) an admission order,
- (b) a treatment order,

- (c) a hospital order,
- (d) a restriction order (except where the person has been conditionally discharged),
- (e) a notice of recall under section 30 of the Law (recall of community patients),
- (f) being given leave of absence under section 36 of the Law, or
- (g) being absent without leave for the purposes of section 37 of the Law.

(2) Subsection (1)(e) shall not have effect for the purposes of section 43(2)(b) of the Law.

*Conditional discharge*

**Supervision upon conditional discharge.**

**13.** (1) Where a person who is subject to a restriction order is conditionally discharged by the Tribunal under section 44(2) of the Law -

- (a) an approved social worker (a "**social supervisor**") shall supervise the conditionally discharged person, and
- (b) an approved medical professional (a "**clinical supervisor**") shall examine and prepare a report on the conditionally discharged person at such intervals as the Department may direct in accordance with any guidance issued.

(2) The report prepared under subsection (1)(b) –

- (a) shall contain such particulars as are required by any rules made under section 40(6) of the Law by the Royal Court, and
- (b) may also contain such particulars as are set out in any guidance issued by the Department including, but not limited to, any fact or opinion which may be relevant in deciding whether –
  - (i) to recall, or
  - (ii) to discharge absolutely,

the conditionally discharged person.

- (3) The Department may issue such guidance as it sees fit as to the role of –
  - (a) social supervisors, and
  - (b) clinical supervisors.

**Conditions to be imposed upon conditional discharge.**

14. Without prejudice to the generality of section 44(4)(b) of the Law, where a person who is subject to a restriction order is conditionally discharged by the Tribunal under section 44(2) of the Law, the Tribunal shall impose a condition that the conditionally discharged person shall attend an appointment with his social supervisor or clinical supervisor (as the case may be) at such intervals as the Department may direct in accordance with any guidance issued in order that supervision may take place or a report may be prepared.

*Electronic transactions*

**Electronic transactions.**

15. For the avoidance of doubt, sections 1 to 5 and 8 of the Electronic

Transactions (Sark) Law, 2000<sup>b</sup> apply to –

- (a) any information, record, notice or instrument, or document of any description,
- (b) any signature,
- (c) any statement or declaration, or
- (d) any requirement or permission to give, produce, serve, send or deliver information or a document,

required by or under the Law.

*Calculation of periods for purposes of section 51(2)*

**Calculation of period for the purposes of section 51(2) of the Law.**

**16.** Where –

- (a) a holding certificate is issued by a medical practitioner under section 51 of the Law, and
- (b) immediately beforehand, an authorised nurse's holding certificate had been issued under section 52 of the Law,

the period specified in section 51(2) of the Law shall be calculated from the time that the authorised nurse's holding certificate was issued.

*Further transitional provisions*

**Further transitional provisions.**

**17.** (1) Where –

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<sup>b</sup> Order in Council No. X of 2001.

- (a) an admission order under Part II of the Mental Treatment (Guernsey) Law, 1939<sup>c</sup> ("**the 1939 Law**"), which is in force immediately before the coming into force of the Law, has been made in respect of a person, and
- (b) that person has been given leave of absence under Article 28 of the 1939 Law,

that person shall be treated as if he –

- (i) is subject to a treatment order made for the purposes of section 24 of the Law, and
- (ii) has been given leave of absence for the purposes of section 36 of the Law.

(2) Where a person is treated as being subject to a treatment order and having been given leave of absence under subsection (1) –

- (a) subject to –
  - (i) his discharge under section 35 of the Law, and
  - (ii) revocation of his leave under section 36(4) of the Law,

he shall be treated as if he has been given leave to be absent for a period of 3 months from the day on which the Law comes into force, and

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<sup>c</sup> Ordres en Conseil Vol. XI, p. 405; Vol. XIII, p. 245; Vol. XVII, p. 64; Vol. XIX, p. 269; Vol. XXIII, p. 328; Vol. XXVII, pp. 144 and 517 and Vol. XXVIII, p. 569.

- (b) the provisions of –
  - (i) section 36(3) and (4) of the Law, and
  - (ii) section 37 of the Law,

shall apply to him as if he had been granted leave of absence by the responsible medical officer.

### *Forms*

#### **Forms which may be prescribed by the Department.**

**18.** (1) The Department may prescribe forms for the purposes of the following sections of the Law –

- (a) section 24(3) (in relation to the renewal of treatment orders),
- (b) sections 26(1), 27(4), 30(5) and 31(2) (in relation to community treatment orders),
- (c) section 38 (in relation to the transfer of patients between approved establishments),
- (d) sections 74 and 76 (in relation to hospital transfer orders), and
- (e) section 83 (in relation to receiving a patient from overseas and detaining that patient in an approved establishment).

(2) Where the Department may prescribe a form under subsection (1), it may also prescribe –

- (a) the information that it must contain,

- (b) any document that must accompany the form, and
- (c) by which person any such document should be signed or certified.

*Rectification*

**Rectification of errors.**

**19.** (1) Where a person specified in subsection (2) completes a prescribed form in relation to a section of the Law specified in subsection (2), an error or defect in that form may be rectified by that person within 14 days of the completion of that form.

- (2) The persons specified in relation to sections of the Law are –
  - (a) an approved medical professional in relation to section 20, 23 or 24,
  - (b) an approved social worker–
    - (i) in accordance with the provisions of section 39 of the Law, in relation to section 20 or 23,
    - (ii) otherwise, in relation to section 24 or 33,
  - (c) a responsible medical officer in relation to section 26, 27, 30 or 31, and
  - (d) the Committee in relation to section 24.

(3) Where rectification has taken place in accordance with subsection (1), the prescribed form shall be deemed to have been completed as if it had originally been completed as rectified.

*Powers in relation to custody, conveyance and detention*

**Powers under section 93 of the Law.**

20. For the avoidance of doubt, in the exercise of the powers or authorities referred to under section 93(2) of the Law, a police officer or any other person required or authorised by or under the Law may use such force where a police officer may use reasonable force in accordance with section 87 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003<sup>d</sup>.

*Notices of recall*

**Notices and orders of recall.**

21. (1) Subject to subsection (2), where –
- (a) a notice of recall is given under section 30 of the Law, or
  - (b) a notice of revocation of leave, or a variation of the terms and conditions of leave, is given under section 36 of the Law,

that notice shall take effect when it is served upon the patient personally or by post.

(2) Where a notice has been served by post, it shall be deemed for the purposes of subsection (1) to have been served on the patient 2 working days after it was posted.

(3) Where the Department by order recalls a patient under section 44(4) of the Law, that order shall take effect when it is served upon the patient personally.

PART IV

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<sup>d</sup> No. XXIII of 2003; as amended by the Fraud (Bailiwick of Guernsey) Law, 2009 (No. XVI of 2009); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009 (No. XXXIII of 2009); Police Powers and Criminal Evidence (Bailiwick of Guernsey) (Amendment) Ordinance, 2011 (No. XXIX of 2011).

## MISCELLANEOUS PROVISIONS

### Interpretation.

22. (1) In this Ordinance -

"**the 1939 Law**" means the Mental Treatment (Guernsey) Law, 1939,

"**advance decision**" has the meaning given in section 8,

"**clinical supervisor**" has the meaning given in section 13(1)(b),

"**Department**" means the States Health and Social Services Department,

"**decision-maker**" has the meaning given in section 8,

"**enactment**" means any Law, Ordinance or subordinate legislation,

"**the Law**" means the Mental Health (Bailiwick of Guernsey) Law, 2010,

"**liable to be detained**" has the meaning given in section 12,

"**prescribed**" means prescribed by regulations of the Department,

"**relevant treatment**" has the meaning given in section 3(a),

"**Royal Court**" means the Royal Court, sitting as an Ordinary Court,

"**social supervisor**" has the meaning given in section 13(1)(a),

"**States**" means the States of Guernsey,

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any

enactment and having legislative effect,

"**valid and applicable**" has the meaning given in section 9,

"**working day**" is any day other than a Saturday, a Sunday and a non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958<sup>e</sup>,

and any other word or phrase shall have the same meaning as found in the Law.

(2) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(3) The Interpretation (Guernsey) Law, 1948<sup>f</sup> applies to the interpretation of this Ordinance.

**Citation.**

23. This Ordinance may be cited as the Mental Health (Miscellaneous Provisions) (Sark) Ordinance, 2013.

**Commencement.**

24. This Ordinance shall come into force on the 10<sup>th</sup> April, 2013.

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<sup>e</sup> Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; Vol. XXXIV, p. 504.

<sup>f</sup> Ordres en Conseil Vol. XIII, p.355.