

GUERNSEY STATUTORY INSTRUMENT

2020 No.

**The Emergency Powers (Coronavirus) (Mental Health)
(Bailiwick of Guernsey) Regulations, 2020**

<i>Made</i>	<i>2nd April , 2020</i>
<i>Coming into operation</i>	<i>2nd April , 2020</i>
<i>Laid before the States</i>	<i>, 2020</i>

WHEREAS there are one or more persons within the Bailiwick who are or may be infected with Severe Acute Respiratory Syndrome Coronavirus 2, resulting in the occurrence of an emergency within the meaning of the Civil Contingencies (Bailiwick of Guernsey) Law, 2012^a;

AND WHEREAS one or more persons within the Bailiwick have died after being infected with Severe Acute Respiratory Syndrome Coronavirus 2;

AND WHEREAS THE Civil Contingencies Authority ("**the Authority**") (having consulted the Medical Officer of Health in respect of the risk to public health created thereby and by the spread of Severe Acute Respiratory Syndrome Coronavirus 2, the virus causing the disease COVID-19, and in respect of the measures necessary to prevent or slow the spread of infection) is satisfied that the conditions set out in section 13 of the Law are satisfied, and that the following regulations contain only

^a Order in Council No. XIV of 2012; amended by Ordinance No. IX of 2016; No. II of 2017.

provisions which are appropriate for and proportionate to the purpose of preventing, controlling or mitigating the emergency referred to above;

AND WHEREAS the Authority is satisfied that the effect of the following regulations is in due proportion to that emergency, and that they are compatible with the Convention rights within the meaning of section 1 of the Human Rights (Bailiwick of Guernsey) Law, 2000^b;

NOW THEREFORE THE AUTHORITY, in exercise of the powers conferred upon it by sections 12(1), 14 and 19 of the Law, and of all other powers enabling them in that behalf, hereby makes the following regulations: -

Temporary modification of mental health legislation.

1. The Schedule modifies -
 - (a) the Mental Health (Bailiwick of Guernsey) Law, 2010^c,
 - (b) the Mental Health (Treatment and Forms) Regulations, 2013^d, and
 - (c) the Mental Health Review Tribunal Procedure Rules, 2012^e,

^b Order in Council No. XIV of 2000; amended by No. I of 2005; Ordinance No. XXXVII of 2001; No. XXXIII of 2003; No. XX of 2015; No. IX of 2016; No. XXVI of 2018; G.S.I. No. 27 of 2006.

^c Order in Council No. XV of 2011.

^d G.S.I. No. 70 of 2019.

^e O.R.C. No. I of 2012.

which modifications shall have effect for the period of validity of these Regulations (but without prejudice to the transitional provisions set out in paragraphs 17 to 19 of the Schedule).

Citation.

2. These Regulations may be cited as the Emergency Powers (Coronavirus) (Mental Health) (Bailiwick of Guernsey) Regulations, 2020.

Extent.

3. These Regulations shall have effect throughout the Bailiwick.

Commencement

4. These Regulations shall come into force on being made.

Dated this 2nd day of April, 2020

A handwritten signature in black ink, appearing to read 'G.A. St Pier', with a small dot at the end.

G.A. ST PIER

Chairman of the Civil Contingencies Authority

For and on behalf of the Authority

SCHEDULE

Regulation 1

Interpretation

1. References in this Schedule to -
 - (a) sections are to sections of the Mental Health (Bailiwick of Guernsey) Law, 2010 ("**the 2010 Law**"),
 - (b) regulations are to regulations of the Mental Health (Treatment and Forms) Regulations, 2013 ("**the 2013 Regulations**"), and
 - (c) rules are to rules of the Mental Health Review Tribunal Procedure Rules, 2012 ("**the 2012 Rules**").
2. Expressions in this Schedule and in the 2010 Law, the 2013 Regulations or the 2012 Rules shall have the same meaning as in that Law, those Regulations or those Rules (as the case may be).

Forms

3. Where any form prescribed in the 2013 Regulations or under the 2012 Rules is inconsistent with a modification made by these Regulations, the form -
 - (a) may, in connection with that modification, be used with appropriate amendments, and
 - (b) is otherwise, for use in that connection, to be read with such amendments as are necessary to reflect that modification.

Modification of the 2010 Law.

4. Section 35 shall have effect –
 - (a) as if the words ", or (if the responsible medical officer is unavailable) an approved medical practitioner," were inserted after "community treatment order relates" in subsection (1), and
 - (b) as if the words "or the approved medical practitioner (as the case may be)" were inserted after "responsible medical officer" in subsection (5).
5. Where section 56(1)(b) applies (administration of medicine for more than three months), an approved medical practitioner (other than the responsible medical officer of the patient) may give a certificate under section 56(3)(b) (appropriateness of treatment without understanding or consent) if the responsible medical officer is of the opinion that complying with the requirement under that provision for the certificate to be given by a second opinion approved doctor is not reasonably practicable or would involve unreasonable delay.
6. An approved medical practitioner acting in accordance with section 35 as modified by paragraph 4 may give a certificate under section 56(3)(b) having consulted only one person, if that practitioner is of the opinion that complying with the requirement under section 56(4) is not reasonably practicable or would involve unreasonable delay.
7. The person consulted in accordance with section 56(4) as modified by paragraph 6 -

- (a) must have been professionally concerned with the patient's medical treatment, and
 - (b) must not be the responsible medical officer of the patient.
8. Sections 64(8) (including as applied by section 65(8)), 67(1), 69(1) and 77 have effect as if references to conveying or admitting a person to an approved establishment within a specified period were references to doing so within that period or as soon as reasonably practicable after the end of that period.
9. Paragraph 8 applies, during a period for which it has effect, in relation to a person in respect of whom a direction is made before the beginning of that period as well as to a person in respect of whom an a direction is made after the beginning of that period.
10. The definition of "mental health practitioner" in section 99 has effect as if the words "or approved social workers (as the case may be)" were inserted immediately after the words "approved medical practitioners".

Modification of the 2013 Regulations.

11. An application for the grant of a treatment order under section 23 during a period for which these Regulations have effect may be accompanied by a medical recommendation made by one approved medical practitioner ("a single recommendation"), if an approved social worker, or other person specified in section 39 (as the case may be), is of the opinion that compliance with the requirement under regulation 5(1) and (2) for the medical recommendations of two approved medical

practitioners is not reasonably practicable or would involve unreasonable delay.

12. A single recommendation for the purposes of regulation 5(1) or (2) as modified by paragraph 11 must otherwise comply with the requirements of regulation 5(1) and (2).
13. An application made in accordance with regulation 5(1) or (2) as modified by paragraph 11 must include a statement of the opinion referred to in that paragraph.

Modification of the 2012 Rules.

14. For the purposes of any hearing subject to the 2012 Rules -
 - (a) the Tribunal is deemed to be properly constituted by the members of the Tribunal sitting within or without the Bailiwick,
 - (b) where the legally qualified member is of the opinion that it is not reasonably practicable or would involve unreasonable delay for one, or both, of the other members of the Tribunal to participate in the hearing, the Tribunal is deemed to be properly constituted by the legally qualified member -
 - (i) sitting with the other member able to participate, or
 - (ii) sitting alone,(as the case may be),

- (c) notwithstanding subparagraph (b), where, after hearing from the patient's legal representative or the patient (if unrepresented), the legally qualified member is of the opinion that it is in the patient's interests that the hearing takes place before a single member of the Tribunal (including, but not limited to, where the patient's mental disorder might be adversely affected by the participation of multiple members of the Tribunal by telephone), the Tribunal is deemed to be properly constituted by the legally qualified member sitting alone, and that member may consult with the other members of the Tribunal where it is in the interests of justice to do so, and
 - (d) for the avoidance of doubt, the Tribunal may exercise any or all of its powers under the 2010 Law where it is constituted in accordance with this paragraph.
15. Any hearing which takes place in accordance with paragraph 14 shall be deemed for all purposes (including that of determining the *lex fori*) to have taken place in Guernsey and the courts of Guernsey accordingly have jurisdiction in accordance with Part VI of the Law, and sections 46 and 47 have effect accordingly.
16. Rule 28 shall have effect as if paragraph (1) were omitted.

Transitional provisions.

17. The end of a period for which a provision of this Schedule has effect does not affect the continuing validity or effect of anything done during that period in reliance on that provision.

18. Paragraph 8 continues to apply after the end of a period for which it has effect in relation to any order or direction made during that period, subject to paragraph 19.
19. The person whose duty is modified by that provision must in any event convey the person concerned to the requisite approved establishment within the period of seven days beginning with the day on which the period referred to in paragraph 18 ends.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are emergency regulations made by the Civil Contingencies Authority under Part 3 of the Civil Contingencies (Bailiwick of Guernsey) Law, 2012 ("**the Law**"). They are made on the occurrence of an emergency, within the meaning of the Law, in the Bailiwick, arising from the urgent need to prevent the spread of the virus Severe Acute Respiratory Syndrome Coronavirus 2 and the disease caused thereby, COVID-19 (referred to together in these regulations as coronavirus). They are prefaced with a statement by the Civil Contingencies Authority, as required by section 12(2) of the Law.

The Schedule to these Regulations sets out the modifications to be made to mental health legislation having effect in the Bailiwick.

Paragraphs 4 to 10 modify the Mental Health (Bailiwick of Guernsey) Law, 2010 ("the Law") to permit any approved medical practitioner (rather than only the patient's responsible medical officer) to discharge a patient under section 35. For the purposes of section 56, an approved medical practitioner (rather than only a second opinion

approved doctor) will be permitted to provide a certificate and, in doing so, that practitioner will only be required to consult with one person, where the practitioner is of the opinion that it is not reasonably practicable or would involve unreasonable delay to comply with the unmodified requirements. Listed sections in Part IX will have effect so that the person may be conveyed or admitted within the specified period or as soon as reasonably practicable thereafter. The definition of "mental health practitioner" in section 99 is widened to permit the Committee for Health and Social Care to approve persons as mental health practitioners to carry out the functions of approved social workers, in addition to those of approved medical practitioners.

Paragraphs 11 to 13 modify the Mental Health (Treatment and Forms) Regulations, 2013 to permit an application for a treatment order under s.23 of the Law to be accompanied by a single medical recommendation where an approved social worker (or other person specified in section 39 of the Law) is of the opinion that it is not reasonably practicable or would involve unreasonable delay for the application to be accompanied by the medical recommendations of two approved medical practitioners.

Paragraphs 14 to 16 modify the Mental Health Review Tribunal Procedure Rules, 2012 to provide that the Mental Health Review Tribunal ("the Tribunal") may properly be constituted according to specified criteria and to omit rule 28(1) which requires the hearing of an application regarding an assessment order under section 21 of the Law to start within 10 days of the date on which the Tribunal received the application notice.

Paragraphs 17 to 19 are transitional provisions.

These Regulations will come into force on the day they are made, 2nd April 2020, and shall have temporary effect only in accordance with the provisions of section 16 (duration and scrutiny of emergency regulations) of the Law.