

Summary of New Mental Health Law

Background

Guernsey's current mental health law dates from 1939. The new law is modelled very much on the England and Wales 1983 Mental Health Act, whilst maintaining some of the simplicity of Guernsey's current law. The law will be introduced on April 8th 2013. The implementation of the new legislation will be supported by a separate Code of Practice as well as various other pieces of delegated legislation. This document is an amended version of an introduction produced by the Health and Social Services Department in 2012. It serves as an introduction to training materials which are available on the Department's website.

The following abbreviations have been used:

<i>A&E</i>	<i>Accident & Emergency Department</i>
<i>ASW</i>	<i>Approved Social Worker</i>
<i>CMHN</i>	<i>Community Mental Health Nurse (CPN)</i>
<i>HSSD</i>	<i>Health & Social Services Department</i>
<i>MHRP</i>	<i>Mental Health Review Panel</i>
<i>MHRT</i>	<i>Mental Health Review Tribunal</i>
<i>OT</i>	<i>Occupational Therapist</i>
<i>RMN</i>	<i>Registered Mental Health Nurse</i>
<i>RMO</i>	<i>Responsible Medical Officer</i>
<i>SW</i>	<i>Social Worker</i>

Outline of New Roles

The new legislation will create a number of new roles:

Approved Social Worker

A fully qualified and registered Social Worker who has undertaken further intensive training in mental health who will be able to:

- Make applications for compulsory admission to hospital (this is currently undertaken by a Parish Constable or relative);
- act as named supervisor for patients on Community Treatment Orders;
- exercise a power of entry and inspection.

Nominated Person

The patient has the right to choose a person whom they wish to act in their interests and with whom they give consent for information about their care and treatment to be shared.

- May be family member, carer, friend, neighbour, clergyman etc.
- Will receive information about treatment plans.
- Will be encouraged to attend Aftercare Meetings and Mental Health Review Panels.
- Can be displaced by a court should the ASW consider the choice of Nominated Person is inappropriate and not acting in the patient's best interests.

Mental Health Law Administrator

Will provide a comprehensive, accurate and professional administration of detained clients and will:

- Ensure documentation is scrutinised and maintained within statutory guidelines.
- Co-ordinate Mental Health Review Panel process, liaising between RMO, ASW, legal representative, panel members, ward managers and patient's nearest relative.
- Take minutes of MHRP.

Mental Health Nurse

Registered Mental Health Nurses will have power to detain an in-patient for up to 8 hours in a mental health ward.

Mental Health Review Tribunal Panel

Will consist of 3 persons: the Chair (a qualified legal practitioner), an independent Consultant Psychiatrist and one lay member. The MHRP can:

- Discharge patients from Assessment, Treatment or Community Treatment Orders.
- Recommend periods of leave from hospital
- Recommend consideration be given to a transfer from a Treatment Order to a Community Treatment Order
- Receive reports from the patient's RMO, ASW, Ward Manager, CMHN and any other mental health practitioner involved.

The patient will be entitled to free legal representation (hopefully under an extension of the legal aid scheme)

The Panel Chair will personally communicate the decision to the patient, and the Mental Health Administrator will ensure communication within a 5 day period.

Outline of New Compulsory Orders

The following compulsory orders are described under the new law:

- Assessment (s21)
- Treatment (s24)
- Police Powers in Public Places (s92)
- Doctor's Holding Powers (s51)
- Nurse's Holding Powers (s52)
- Community Treatment Orders (s26)

Assessment Order (section 21)

- Application to be made by the ASW.
- Compulsory admission for up to 28 days (replaces the current 7 day Urgency Order, and equivalent to Section 2 of the England and Wales 1983 Mental Health Act).
- Grounds for detention:
 - i. Patient is suffering from mental disorder of a nature or degree that warrants detention for a limited period; and
 - ii. Patient needs to be detained for his own health or safety or for the protection of others
- One medical recommendation required, preferably patient's GP, who will consult with Consultant Psychiatrist before making a recommendation.
- The patient may make an application to the Mental Health Review Panel after a period of 5 days from order being made.
- The patient can be discharged by the RMO prior to the expiry of the 28 days.
- The Assessment Order cannot be renewed. Upon expiry, the patient will revert to Voluntary status, or an application be made for a Treatment Order

Treatment Order (section 24)

- Will allow compulsory detention for up to 6 months. It can be renewed, in the first instance for 6 months, then subsequently, for periods of 12 months. (Replaces current Certification Order).
- Two medical recommendations required for a Treatment Order. Patients who are currently out in the community, will require two medical recommendations of which one should wherever possible, be the patient's own GP
If the patient is already an inpatient, it would be appropriate for the patient's RMO to make one of the medical recommendations together with a GP (preferably the patient's own GP).

- Not more than 5 days must elapse between the 2 medical examinations.
- Grounds for admission under Treatment Order:
 - i. Patient is formally diagnosed as suffering from mental disorder; and
 - ii. Mental disorder is of a nature or degree that makes it appropriate for the patient to receive treatment in hospital.
 - iii. It is necessary for his/her health and safety, or the protection of others that he/she should receive such treatment, and it cannot be provided unless he/she is detained.
- Application made by ASW.
- Applicant will have seen the patient within 7 days.
- Application can only be signed after the 2 medical recommendations are complete.
- Patient may make application to the MHRP once during each (6 month) period of detention.
- RMO can discharge patient from this order before expiry.
- RMO has responsibility to convene an aftercare meeting (via Mental Health Act Administrator).

Police Urgency Order (Place of Safety - Section 92)

The current designated Place of Safety is Guernsey police Station

- Allows for compulsory admission to a Place of Safety for up to 72 hours, allowing the patient to be interviewed by an ASW and medical officer.
- Replaces the existing Police Urgency Order (7 days).
- Grounds for the Police Urgency Order:
 - i. Person is in a public place and appears to be suffering from mental disorder of a nature or degree that warrants detention for a limited period: and
 - ii. The patient needs to be detained for his/her own health or safety, or for the protection of others.
- A medical officer can discharge the patient before the 72 hour expiry.
- Treatment should only be administered with the patient's valid consent

Doctor's Holding Power (Section 51)

Allows for the detention of a voluntary patient for a period not exceeding 72 hours (replaces the existing 31.5 holding order).

- Extended (from only Consultant Psychiatrist) to other appropriate doctor in charge of the patient's care at that time, e.g. duty doctor, A&E doctor.(see code of practice).
- Would usually be applied to voluntary patient who has expressed desire to leave hospital before there is time to complete an assessment or treatment order – based on concerns for the safety of the patient and/or others.
- This order cannot be renewed immediately after expiry.
- Treatment should normally only be administered with the patient's valid consent.
- The RMO (or another doctor to whom this responsibility has been delegated) can discharge the patient before the expiry of the 72 hours

Nurse's Holding Power (Section 52)

- Will allow a Registered Mental Health Nurse to detain a voluntary patient who is already being treated for mental disorder, for up to 8 hours.
- Grounds for detaining a patient under this power:
 - i. The patient is suffering from a mental disorder to a degree and of a nature that makes it necessary for his/her health or safety, or for the protection of others, for him/her to be immediately restrained from leaving hospital.
- It can only be applied if the patient is either indicating verbally or otherwise that he/she

wishes to leave hospital; and it is not possible to immediately obtain a doctor for the purpose of applying a Medical Holding Power.

- It will commence after the Nurse has recorded their opinion, in the form prescribed, and end 8 hours later, or on application of a Medical Holding Power.
- The Nurse exercising this power must be registered on the NMC Register sub-part 1, Registration code RN3 or RNMH (Mental Health) or RN5 RNLD (Learning Disabilities).
- This order cannot be renewed.

Community Treatment Order (section 26)

- Allows for compulsory treatment in a community setting for up to 6 months. It is renewable, in the first instance for a further 6 months, and thereafter each 12 months.
- *Grounds for a Community Treatment Order:*
 - i) The patient is suffering from a mental disorder of a nature or degree that warrants treatment and supervision in the community; and
 - ii) The patient needs to be supervised for his own health or safety, or for the protection of others, or to prevent exploitation by others
- *Community Treatment Order will confer the following powers:*
 - i. Power to require the patient to reside at a specified place and convey them there if necessary.
 - ii. Power to require the patient to attend at places and times specified for the purpose of medical treatment, occupation, education or training.
 - iii. Power to require that access to the patient is given, at any place where the patient is residing, to any registered medical practitioner, ASW or other person so specified.
 - iv. The power to convey and admit to hospital.
 - v. The power to enforce compliance with prescribed treatment.
- If a patient subject to a Community Treatment Order is admitted to hospital, then the order will remain valid for 28 days, then if deemed necessary, transfer for Treatment Order or discharge.
- Named Supervisor will be appointed, with the authority to exercise powers conferred by the Order in person, or with assistance from the police, who will act on the advice of the Named Supervisor, or other Officers of the HSSD.
- If a Community Treatment Order is applied to someone who is currently subject to a Treatment Order, it would have the effect of a new order.
- Two medical recommendations will be required, less than 5 days apart. RMO and GP who knows the patient.
- Application for Community Treatment Order can be made by the RMO.
- If a patient fails to comply with the terms of the Order, then further powers come into effect.
- A patient subject to a Community Treatment Order can be required to attend any form of therapeutic intervention prescribed by the RMO in conjunction with the multi-disciplinary team.
- The patient can request (RMO or Mental Health Review Panel) to discharge them from the Order
- A patient can request that the MHRT consider the continued need for the Order during each 6 month period of detention. The Mental Health Law Administrator will assist in completing the application form.
- An ASW can apply for renewal of the Community Treatment Order. The RMO will be required to recommend.

Consent to Treatment

“Consent” is the voluntary and continuing permission of the patient to receive a particular treatment, based on an adequate knowledge of the purpose, nature, likely effects and risks of that treatment including the likelihood of its success and any alternatives to it. Permission given under any unfair or undue pressure is not ‘consent’.

- i. Under common law valid consent is required from all patients with capacity to consent, before medical treatment can be given. Common law may however authorise treatment where the patient is incapable of consenting and treatment may also be authorised by Statute under Part VIII. (There was no provision within the Guernsey 1939 Law for the patient to grant or withhold consent to treatment).
- ii. The assessment of a patient’s capacity to make a decision about his or her own medical treatment is a matter for clinical judgement, guided by current professional practice and subject to legal requirements.

Treatments requiring the patient’s consent AND a second opinion – neurosurgery for mental disorder (sometimes known as “psychosurgery”) and the surgical implantation of hormones for the reduction of male sexual drive. These provisions apply to all patients whether or not they are liable to be detained or otherwise subject to the Law.

Treatments requiring a SOAD’s (Second Opinion Appointed Doctor) opinion

1. A detained person continuing with medication following a three month period where he is continuing to refuse or lacks capacity to give valid consent – thus requiring SOAD intervention.
2. ECT
Various new safeguards are included

Section 56 – Treatments requiring consent or a second opinion

Valid consent should always be sought by the detained patient’s RMO / Nominated Deputy:

Criminal Justice Orders

Orders under the following sections will be available to the Courts

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| 63) | Remand on bail for report |
| 64) | Remand to approved establishment for report |
| 65) | Remand to approved establishment for treatment |
| 66) | Hospital Treatment Orders |
| 68) | Interim Hospital Treatment Orders |
| 70) | Restriction Orders |

Visual Chart for Mental Health Staff Guernsey Mental Health Law 2010 – Key Sections

Number	Subject
1)	Mental disorder
13)	Definition of nearest relative
16)	Court appointment of nearest relative
21)	Assessment Order
24)	Treatment Order
26)	Community Treatment Order
30)	Recall of CTO patient
35)	Discharge of patients
36)	Leave of absence
43)	Powers of the Tribunal
48)	Informal admission of 16+
49)	Informal admission of children
51)	Doctor's holding power
52)	Nurse's holding power
56)	Treatment requiring consent or second opinion
60)	Urgent treatment
61)	Treatment not requiring consent
63)	Remand on bail for report
64)	Remand to approved establishment for report
65)	Remand to approved establishment for treatment
66)	Hospital Treatment Orders
68)	Interim Hospital Treatment Orders
70)	Restriction Orders
87)	Duty of managers to give information to detained patients
88)	Duty of managers to give information to CTO patients
91)	Warrant to search for and remove persons and patients
92)	Mentally disordered persons found in public places

2013 Mental Health Ordinance

covers ECT, treatment of CTO patients, nearest relative issues, supervision of conditionally discharged patients, forms, rectification of errors.

Code of Practice provides guidance on the operation of the Law.

Human Rights Law 2000 is important background reading.

The **Mental Health Review Tribunal Procedure Rules 2012** govern MHRTs.

Glossary of terms used in mental health law in Guernsey.

Advance decision	Advance refusal of a medical treatment
Advocate	Advocate of the Royal Court
Approved establishment	Place approved to treat psychiatric patients
Assessment order	Detention for assessment up to 28 days
ASW	Approved Social Worker
AWOL	Absent Without Leave
CAMHS	Child and Adolescent Mental Health Services
Child	A person under 18 years old
The Children Law	The Children (Guernsey & Alderney) Law, 2008
Clinical supervisor	A doctor responsible for a conditionally discharged patient
The Code	Code of Practice
Community patient	A patient subject to a Community Treatment Order
The Convention	The European Convention on Human Rights
CTO	Community Treatment Order
The Department	States of Guernsey Health and Social Services Department
FME	Forensic Medical Examiner
The Law	The Mental Health (Bailiwick of Guernsey) Law, 2010
GP	General Practitioner
HIW	Health Inspectorate Wales
The Human Rights Law	The Human Rights (Bailiwick of Guernsey) Law, 2008
Mental disorder	Any disorder or disability of the mind
NR	Nearest Relative
Nominated person	Person appointed by patient to act as nearest relative
PPACE	Police Powers and Criminal Evidence Law, 2003
RMO	Responsible Medical Officer (in charge of a patient's treatment)
Social Supervisor	An ASW supervising a conditionally discharged patient
SOAD	Second Opinion Approved Doctor
Supervisor	Person named as supervisor for CTO patient
The Tribunal	Mental Health Review Tribunal