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STATUTORY INSTRUMENTS

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**2008 No. 1210**

**The Mental Health Act 2007 (Commencement  
No. 6 and After-care under Supervision: Savings,  
Modifications and Transitional Provisions) Order 2008**

**PART 2**

**ACUS PATIENTS: SAVINGS, MODIFICATIONS  
AND TRANSITIONAL PROVISIONS**

**Duty to determine certain matters in respect of ACUS patients**

**8.—(1)** The community responsible medical officer of an ACUS patient must, during the review period, determine whether, in respect of the patient—

- (a) the grounds for the making of an application for admission for assessment, as set out in section 2(2) of the 1983 Act, are met;
- (b) the grounds for the making of an application for admission for treatment, as set out in section 3(2) of the 1983 Act, are met;
- (c) the grounds for the making of a guardianship application, as set out in section 7(2) of the 1983 Act, are met;
- (d) the relevant criteria for the making of a community treatment order, as set out in section 17A(5) of the 2007 Act (as modified by this Order), are met, or
- (e) none of the grounds or the criteria referred to above are met.

(2) The “review period” referred to in paragraph (1) is the period beginning on the commencement day and ending on the earlier of —

- (a) the end of 3rd May 2009; and
- (b) the end of the period of after-care under supervision as determined in accordance with section 25G(1) or (7) of the 1983 Act or article 7, as the case may be.

(3) In order to make a determination under paragraph (1), the community responsible medical officer must have personally examined the patient within the period of fourteen days ending with the date of the determination.

(4) Before making a determination under paragraph (1), the community responsible medical officer must comply with the same requirements of section 25H(3) of the 1983 Act with which that officer would be required to comply if making a direction under section 25H(1) of that Act.

(5) Where the community responsible medical officer determines in accordance with paragraph (1) that, in respect of the patient—

- (a) the grounds for the making of an application for admission for assessment, an application for admission for treatment or a guardianship application are met, then that officer may make a recommendation for the purposes of such an application;

- (b) the criteria for the making of a community treatment order are met, then that officer may, subject to section 17A(4) of the 1983 Act (community treatment orders) (as modified by this Order), make a community treatment order in respect of the patient, or
  - (c) none of the grounds or the criteria referred to are met, then that officer must direct that the patient cease to be subject to after-care under supervision in accordance with section 25H of the 1983 Act (ending of after-care under supervision), and subsection (3) of that section shall be taken to have been complied with by virtue of having complied with the same requirements for the purposes of paragraph (4).
- (6) Where the community responsible medical officer makes one of the recommendations referred to in paragraph (5)(a)—
- (a) that recommendation must comply with the requirements of section 12 of the 1983 Act (general provisions as to medical recommendations) and must also comply with—
    - (i) section 2(3) of the 1983 Act in the case of a recommendation for the purposes of an application for admission for assessment;
    - (ii) section 3(3) of the 1983 Act in the case of a recommendation for the purposes of an application for admission for treatment;
    - (iii) section 7(3) of the 1983 Act in the case of a recommendation for the purposes of a guardianship application; and
  - (b) that officer must immediately notify the local social services authority of the making of the recommendation.
- (7) The notification by a community responsible medical officer of the making of a recommendation under paragraph (6)(b) shall be sufficient reason for the local social services authority in whose area the ACUS patient is resident to think that an application for admission to hospital or a guardianship application may need to be made in respect of that patient for the purposes of section 13(1) of the 1983 Act (duty of approved mental health professionals to make applications for admission or guardianship).
- (8) Where the community responsible medical officer makes a community treatment order in respect of an ACUS patient, that officer must, with respect to the making of that order, comply with the requirements of—
- (a) the Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008<sup>(1)</sup> where the responsible hospital is to be a hospital in England;
  - (b) such Regulations in respect of Wales as are made by the Welsh Ministers<sup>(2)</sup> for similar purposes to those in paragraph (a) where the responsible hospital is to be a hospital in Wales;

and for that purpose, insofar as those Regulations relate to the making of a community treatment order, a reference to the responsible clinician shall be read as a reference to the community responsible medical officer.

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<sup>(1)</sup> S.I. 2008/ 1184

<sup>(2)</sup> The Welsh Ministers have indicated that they intend to make an equivalent instrument to S.I. 2008/[to be inserted] in respect of Wales.